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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 90.

FRANCIS E. HINCKLEY, LATE RECEIVER, &C., APPELLANT,

vs.

THE GILMAN, CLINTON AND SPRINGFIELD RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 9, 1876.

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INDEX.

	Original.	Print.
Stipulation of counsel as to facts and printing of record	1	1
Receiver's reports	5	2
Order on receiver to pay over balance of money	99	48
Notice and affidavit	101	48
Notice of complainants to receiver	103	49
Order allowing trustee's expenses	105	50
Order on Fidelity Savings Bank to surrender bonds	106	50
Report of special master on exceptions to receiver's report	107	51
Exceptions of Hinckley to master's report	114	53
Exceptions of complainants to master's report	118	54
Exceptions of Hinckley to special master's report	120	55
Order setting exceptions for hearing	125	57
Order overruling exceptions and decree against receiver	127	58
Order allowing appeal	129	59
Bill of exceptions	131	60
Bond	285	111
Clerk's certificate	291	114
Assignment of errors	294	115
Bond	295	115

1 In the Supreme Court of the United States.

Appeal from the circuit court of the United States for southern district of Illinois.

FRANCIS E. HINCKLEY, LATE RECEIVER, APPELLANT,
vs.
THE GILMAN, CLINTON AND SPRINGFIELD RAILROAD COMPANY, appellee.

To obviate the necessity of examining a large part of the very voluminous record filed in this cause the following statement is agreed upon between the counsel of the parties to this branch of the case.

Levi P. Morton et al., the holders of sundry bonds issued by the Gilman, Clinton and Springfield Railroad Company, secured by a deed of trust made to Thomas A. Scott and Hugh J. Jewett, as trustees, filed a bill in the circuit court of McLean County, State of Illinois, seeking a foreclosure of the trust deed and a sale of the property for their benefit.

Shortly prior to the filing of this bill, Joseph J. Kelly had filed a bill as a stockholder of said railroad in the same court, and Francis E. Hinckley, a citizen of Chicago, had been appointed receiver, and con-
2 tinued to discharge the duties of such officer pending the proceedings in both cases against the road.

On June 23rd, 1875, Thomas A. Scott and Hugh J. Jewett, the trustees named in the deed of trust, came into said circuit court of McLean County, and became parties to the said suit of Morton et al. against the railroad, and from that time the litigation was carried on in their names, the receiver still acting in both cases, and reporting to the circuit court of McLean County.

On the 13th day of December, 1875, the said cause was removed to the circuit court of the United States for the southern district of Illinois, under the provisions of the act of Congress of March
3 8, 1875.

Prior to this, on August 12th, 1875, the property was ordered to be turned over to the trustees under the provisions of the mortgage, by order of the circuit court of McLean County, and the receiver directed to settle his accounts up to that date, and his accountability as such receiver ceased from the 28th day of August, 1875, the property having at that time been handed over by him to the agent of the trustees as aforesaid.

The subsequent proceedings in the circuit court of the United States for the southern district of Illinois aforesaid were carried to completion, the sole parties then in court being the trustees and their cestius qui trust, and the said Gilman, Clinton and Springfield Railroad Company and its receiver, all other parties having been dismissed from the record. The final decree having been had and the road having been sold by virtue thereof and a deed for the same duly executed and approved by the said court, and no appeal ever having been prayed.

G. W. KRETZINGER,
Sol. for Appellant.
R. BIDDLE ROBERTS,
Solicitor for Appellee.

4 In addition to the foregoing statement the clerk is requested to print of the record on file—

From pages 601 to 691, inclusive.
" " 758 to 760, inclusive.
" " 1015 " 1018, inclusive.
" " 1041 " close of record.

G. W. KRETZINGER,
Sol. for Appellant.
R. BIDDLE ROBERTS,
Solicitor for Appellee.

5 RECEIVERS' REPORTS.

STATE OF ILLINOIS,
McLean County, ss:

In the circuit court of said county of the March term A. D. 1874.

JOSEPH J. KELLY ET AL.
vs.
THE GILMAN, CLINTON AND SPRINGFIELD Railroad Company et al. } In chancery.

Report of receiver.

To the honorable Thomas F. Tipton, presiding judge of the McLean County circuit court:

By an order of your honorable court, dated the 26th day of November, A. D. 1873, made in the above entitled cause, your receiver did, after some delays by injunction, take full possession of the Gilman, Clinton & Springfield Railroad on the 2nd day of December following, since which time he has had possession of said railroad and managed its operation.

Immediately upon taking possession of said railroad, your receiver caused to be made an invoice of the property he found in the possession of the said company, a copy of which is hereto appended and marked Schedule A.

The total gross earnings of the said railroad for the three months ending Feb'y 28, 1874, are as follows, viz:

6

For December, 1873	$15,342 91
" January, 1874	20,600
For February, "	19,057 11
Total for said 3 months	55,000 02

The operating expenses for the same time were as follows, viz:

For December, 1873	$11,602 41
" January, 1874	11,329 70
For February, 1874	$12,401 13
Total expenses for said 3 months	$35,333 24
Leaving net earnings for the 3 months	$19,666 78

The earnings for the months of February are estimated as the accounts

are not all completed, but it is believed the results will not vary materially from the amount stated.

The following is a comparative statement of the earnings of the road for the corresponding months during the preceding year:

Earnings for December, 1872	$17,708 30
" " " 1873	15,342 91
Decrease	2,365 39
Earnings for January, 1873	$17,347 34
" " " 1874	20,600
Increase	$3,252 66
7 Showing an increase for the two months of	$887 27
Earnings for February, 1873	$19,481 07
" " " 1874 (estimated)	19,057 11
Decrease	$423 96
Total increase for the 3 months of	$463 31

The following is a comparative statement of the operating expenses of the road for the corresponding months during the preceding year:

Expenses for December, 1872	$19,154 83
" " " 1873	11,602 41
Decrease of expenses	$7,552 42
Expenses for January, 1873	$21,808 85
" " " 1874	11,329 70
Decrease of expenses	$10,479 15
Expenses for February, 1873	$17,441 16
" " " 1874	12,401 13
Decrease of expenses	$5,040 03
Total decrease for the 3 months	$23,071 60

The receipts from all sources were as follows, viz:

For December, 1873	$22,289 91
For January, 1874	$20,095 86
8 " February, "	29,267 72
	$61,653 49

CONTRA.

The disbursements were as follows, viz:

For December, 1873	$18,398 33
" January, 1874	20,993 59
" February, "	20,991 84
	60,383 76
Leaving balance on hand March 1, 1874	$1,269 73

On taking possession of the road the former treasurer reported no money on hand. I found the pay-rolls for September, October, and November unpaid, which is as far back as my order allows me to pay.

I have paid the rolls for September, October, November, & December, and will pay for January in a few days.

I find a part of the property in Springfield was sold for the taxes of 1871, and the time of redemption expires in the month of May next.

I have paid the taxes in Sangamon County for 1872.

I found quite an account of unpaid supply bills, which I have paid as far as I had funds to do so.

I have purchased and put on the road 26,470 lbs. of new T-rails, 24,000 lbs. of spike; have furnished the material for 212 rods of new fence now being constructed.

I find the first great need of the road is a fence. But a very small part is fenced; in consequence, a large amount of stock has been killed and many of the claims are yet unpaid, which causes great dissatisfaction on the line of the road.

Another great need of the road is additional side track, by which the earnings of the road could be increased and the operating expenses greatly reduced.

F. E. HINCKLEY,
Receiver.

SCHEDULE A.

Invoice of property belonging to the Gilman, Clinton and Springfield Railroad, December 1st, 1873.

CASHIER'S OFFICE.

1 desk.
1 W. paper basket.
1 high stool.
1 standing desk.
1 carpet and cocoa matting. Guard rail and gate.
1 letter-press brush & cup.
3 upright files.
3 window curtains.
1 directory.
1 spittoon.
1 letter-slip, 3 inkstands—pens.
50 car mileage blanks.
250 credit vouchers.
150 president letter heads.
1 wooden bracket.
1 water cooler.
1 " pail and cup.
5 boxes matches.
8 boxes assorted printed envelopes.
4 bot's red ink.
1 ruler pen rack.
250 vouchers.
250 note heads.
2 rubbers.
5 small order books.
1 book unclaimed wages.
3 bot's ink.
1 " mucilage.
1 directory of G., C. and S. R. R.
1 discharge ticket book.
1 stub check book.
1 letter-book (half used).
1 cashier's seal.
200 cashier's receipt blanks.
100 director's blank notices
1 chair & cushion.
1 door spring.
1 gas bracket.
1 tin light chandelier.
Stamps, $3.82.
100 remittance tickets.
1 cash book.

AUDITOR'S OFFICE.

1 standing desk.
1 sitting desk.
3 chairs, 1 cushion.
1 case for blanks.
1 w. paper basket.
1 book level.
1 step-ladder.
1 spittoon.

11
1 duster.
1 pen rack.
5 ink bottles.
1 stamp.
1 ruler.
3 pen-holders and pens.
1 p'ce rubber.
Retained copies of tax returns.
1 report R. R. & W. com'rs.
1 box sealing wax.
4 maps, line of road.
1 journal No. 1.
1 ledger No. 1.
1 accounts payable book.
1 index to ledger.
1 operating expense book.
300 blank trial balance sheets.
1 case P. holes (126 holes).
60 " boxes.
Telegraph contract.
4 leases of June, 1872.

50 blanks operating expenses.
200 check rolls.
100 agents' blank bonds.
50 time returns.
25 master mechanics' return.
250 " " supply blanks.
1 bot. ink.
1 draft book, partly used.

1 note "
1 window curtain.
1 b'x quills.
1 eraser.
1 b'x paper fasteners.
1 " rubber bands.
1 order book.
1 R. R. supply directory.
1 letter file.
1 " clip.
1 match safe.
2 copies of 2n mortgage bonds.
1 mail contract.
1 box engineers' notes of construction.
In lumber room:
1 time chart frame.
2 lengths R. iron pipe.
1 telegraph line reel.
3 brooms (new).
1 pat. pail.

GEN. FREIGHT AND TICKET OFFICE.

1 letter-press and stand.
1 table 10 feet long.
1 standing-desk with drawers.
1 table.

12
2 stoves.
4 window-shades.
1 small pine portable book-case.
14 fr't forw'd and rec'd blank-books.
13 agents' baggage blank-books.
27 train baggagemans' "
200 blank form B, 3
150 train baggagemans' reports.
500 form B 2.
400 " " 1.
100 " " 4.
1 coupon division blank-book.
1 book passenger rates.
4 conductors' punches.
2 letter-clips.

2 paper-files.
8 small bottles ink.
5 small " mucilage.
1 large " "

3 boxes sealing-wax.
1 doz. lead pencils.
1 " pen-holders.
4 b'x large envelopes.
7 " small "
2,000 car destination cards.
2,000 G. F. O., form 5.
1 box G. F. A. envelopes.
2,000 car-slips.
8 W. bill impression books.
26 freight tariffs.
250 joint "
50 catalogue cards.
1,700 G. F. O. Form 4.
350 G. F. O. " 3.
750 " " 2.

1 bill-head holder.
200 " " 4½.
500 special blank tariff.
1,000 small letter-paper head'.
750 G. F. O. 6.
1,000 letter-paper G. F. & T. A.
7,000 letter-head blank stations.
2,000 G. F. O. 9 blanks.
500 " 7 "
200 " 8 "
200 " 10.
50 " 11.

13 200 " 13.
100 " 14.
150 " 15.
5,000 " 16.
500 " 16½.
1,000 " 31.
2,500 " 25½.
50 " 30.
1,000 " 21 fr't vouchers.
1,500 " 25.
2,000 " 24.
1 " hand stamps.
200 statements earnings.
500 G. F. O. 20 blanks.
500 G. T. O. 1.
10 G. T. O. 2.

25 G. F. O. 3.
200 G. T. O. 11.
20 G. T. O. 15.
400 note heads.
25 G. F. O. 7.
300 G. T. O. 13.
500 " 12.
220 G. T. O. 10.
200 G. T. O. 9.
300 G. T. O. 8.
500 blank vouchers.

50 G. T. O. 4.
50 stock pass-books.
800 pass'r tariffs.
2 G. F. A. & G. T. A. hand stamp'.
169 3 c. postage-stamps.
1 box pens.
2 drop-light'.
2 office chairs.
5 arm "
1 rush-bottom chair.
1 envelope rack (tin).
3 spittoons.
2 carpets.
2 waste-paper baskets.

SUPERINTENDENT'S OFFICE.

1 table ten feet long.
1 desk.
1 lounge.
1 circular table.
1 cupboard for stationery.
4 window-shades.
1 P. O. letter balance.
1 copy Asher & Adams' Gazetteer.
100 letter-heads, gen. sup'ts.
500 letter-heads, ass't sup'ts.

14 800 small envelopes, ass't sup'ts.
400 small envelopes, M. of T.
450 large " ass't sup'ts.
200 blanks stock killed.
11 books blank discharge tickets.
1 letter-book.
1 copy Statute Ill., 1868.
1 " " " 1873.
1 Granger ink-stand.
1,000 coal tickets.
4 time-books, large.

1 soapstone stove.
1 oil-cloth rug.
1 carpet.
1 clock.
1 U. S. map (Collins').
50 cond'r train book.
30 fr't cond'rs tabs.
700 tel. car reports.
200 train register sheets.
700 fr't cond'rs wheel reports.
100 gen. tel. car report.

1 W. paper basket.
100 daily report cars delivered.
100 " " " " large.
15 soft blank books.
3 white lanterns.
3 red "
Passenger rooms:
7 settees.
2 stoves.
2 water-coolers.
Baggage-rooms:
1 stove.
1 table.

2 time-books, small.
1 letter-box.
1,000 pass. cond'r wheel reports.
800 cord time reports.
500 do. " "
4 latch-keyes.
3 coach keyes.
1 box pens.
1 box mucilage.
1 chair.
1 800-lb. scales.
1 baggage truck.
1 ice-box.
5 tons coal.
2 sections (50 feet) rubber hose, ½-in.
668 foreign checks.
78 local checks.

ROAD-MASTER'S DEPARTMENT.

Pine timber for bridges, 2,900 f't.
Stock boards, 2,744 feet.
Fencing, 56 feet.
Joice studding, &c., 1,288 feet.
Switch ties, oak, 40.
2 setts cattle guard timbers, 1,234 ft.
Oak plank, 1,056 feet.
Cross-ties, oak, 6,846.
" " hemlock, 167.
240 lbs. bolts & nuts.

15 Telegraph poles, 150.
Coal in Gilman sheds, 425 tons.
Wood, 90 cords.
Coal-shed, Gilman, 100 ft. x 24.
Coal derrick-house, 20 ft. x 26 ft. x 20 ft. high.
Coal platform, Clinton.
Seven water-tanks with McGowan power-pumps complete.
Size water-tank frames, 16 x 17 ft. x 14 ft. high.
Size of bottom of tub, 18 ft. wide.
Size top of tub, 16 ft. 6 in.
" height, 16 ft.
1 boring machine.
2 bridge hooks.
1 bridge wheel-wrench.
2 timber buggies.
1 grinding-stone.
1 block & fall.
14 ft. rope for swing-tables.
4 crank augurs.
2 monkey-wrenches.
1 cross-cut saw.
4 bridge wrenches.
2 screw-jacks.
3 water-kegs.
2 p'r's gas tongs.
3 pump wrenches.
500 lbs. boat spokes.
987 lbs. smith chains.
4 line frogs, complete.
5 crossing " "
1 McGowan power-pump.
2 " " " bottom.
2 " " " arms.
4 " " " lever.
5 lbs. pure rubber.
1 cast-iron stove.
4 joints stove-pipe.
200 lbs. fencing nails.
100 " 20-penny "
1 pile-driver.
20 hand-cars.
16 truck-cars.
7 tool-boxes.
105 shovels.
45 clay picks.
28 claw bars.
24 crow "
1 shackel "
61 jumping bar.
3 mattocks.
38 spike mauls.
45 cold chisels.
6 track punches.

16 1 ratchet drills.
1 p'r ice tongs.
30 oil-cans.
18 track guages.

2,500 lb. track spikes.
920 lbs. fish-plates.
3 chopping axes.
27 lanterns.
18 track levers.
17 straight edges.
1 post augers.
14 foot adzes.
18 hand axes.
22 padlocks.
6 brush-scythes.
3 curving hooks.
26 track wrenches.

SPRINGFIELD, ILLS.

2 desks.
3 tables.
3 chairs.
1 press.
1 stove.
1 coal bucket.
1 copying press.
2 bracket lamps.
2,175 blank forms.
2 trucks,
1 desk, and
1 hatchet in warehouse.

BARCLAY.

2 stock pens with chute.
Depot building:
1 passenger waiting-room.
1 office "
1 freight "
3 wooden setters.
Furniture.
1 ticket case.
1 desk.
1 table.
1 chair.
2 stoves.

CORNLAND.

1 ticket case.
1 desk.
1 stamp.
1 weight and cord.
1 pulley.
1 W. bucket.

17
1 rule.
1 P. cutter.
1 chair.
2 benches.
1 instrument table.
1 register.
1 relay.
1 key.
1 cutout.
2 P. boxes.
1 tariff book.
2 lbs. sulph. copper.
20 No. 2 blanks.
30 No. 44 blanks.
20 " 45 "
507 freight "
40 passenger dep't blanks.
1 book freight forward.
1 book freight received.
2 lamps & fixtures.
1 lantern worthless.
2 stoves & pipe.
1 C. hod.
1 F. shovel.
1 poker.
1 local jar.
1 zinc "
1 local.
10 letter envelopes (small).
Blanks, baggage department.
84 blanks in all.
1 book tariff G., C. & S.
1 " " I. C.
15 gen'l freight report envelopes.
15 ticket " "

MT. PULASKI.

1 stove "Andes," No. 3.
1 " " " 2.
1 freight truck.
3 seats (1 broken).
1 side lamp.
1 hand "
1 lantern.
2½ tons of coal.
1 local ticket case.
1 coupon " "
1 ticket stamp.
1 telegraph table.
1 " key.
1 " relay.

18 Office chair.
" desk.
1 water pail.
Red flag.
3 padlocks & keys.
1 cutout.
1 local battery.
The necessary books for business, and ½ month's supply of blanks in all departments.

CHESTNUT.

2 stoves & piping.
1 lantern.
2 lamps.
2 oil cans.
1 desk.
1 chair.
2 settees.
1 pinch bar.
3 tons of coal.
1 ticket case.
1 coal hod.

KENNEY.

2 stoves & pipe.
1 coal bucket.
About 6 tons of coal.
3 settees.
1 office chair.
1 desk.
1 freight forward book.
1 " received "
1 ticket case.
Lot of blank reports.
1 register.
1 sounder.
1 relay.
1 key.
1 tariff book.
Cash, $64.71.
Uncollected fr't, $3.30.
989 blank forms.

CLINTON.

1 desk & table.
1 office chair.
1 stove & pipe.
1 water pail.
1 sett of scales.
1 pinch bar.
1 coal hod.
1 broom.

19 2 oil cans.
1 lamp.
2 hand lanterns, 1 white, 1 red.
1 warehouse truck.
1 red lantern.
1 bulletin board.
1 shovel.
1 poker.
1 small ticket case.
1 date stamp.
1 train register.

Amount of property on hand in machinery dep't Dec. 1st, 1873.

Engine-house, 10 stalls.
Machine shop, 60 x 80 feet.
Blacksmith shop, 40 x 60 feet.
Carpenter " 40 x 60 "
Frame engine-house at Springfield, 4 stalls.
2 Greenleaf turn-tables.
4 2½ couplings.
11 2½ hangers.
1 No. 3 Stutefant blower.
5 anvils.
1 40 in. bellows & forge.
1 24 " " " "
22 pulleys (8 to 56 in.)
1 30 in. engine lathe & countershaft.
1 15 in. engine lathe & countershaft.
1 Sellers & Co.'s shaper No. 107, countershaft.
1 stationery engine & boiler.
Britcheon, slides & pipe for same.
1 injecter No. 4.
100 feet cold roll, shafting 2½ inch.
50 " " " " 1½ "
4 2½ collars.

20
1 Sellers & Co.'s plainer, 30 × 30–10 ft. bed, counter-shaft.
1 Sellers & Co.'s screw cutter, counter-shaft.
1 car-wheel borer, counter-shaft.
1 industrial drill-press No. 80, counter-shaft.
1 hydraulic car-wheel press, counter-shaft.
5 grind-stones (2 larg' & 3 small.)
1 sawmandrill (3 saws complete.)
1 one ton patent pulley block.
2 ten ton hydraulic jacks.
4 Leffret jacks.
6 car jacks.
5 Union vises.
3 wrought "
2 pair bench shears.
2 No. 2 hand snipes.
3 pipe wrenches.
1 Stanwood pipe cutter.
2 machine hack saws.
1 McGowan power pump.
1 " hand "
1 pair platform scales.
2 counter "
1 paint mill.
4 bench screws.
8 hand "
13 large engine-house stoves.
5 small stoves.

21
2 large galv. iron oil tanks.
2 cast " "
2 ladders (1 large 1 small).
3 carpenter benches.
667 lbs. 7 in. stove-pipe.
37 joints 6 in. stove-pipe.
9 elbows.
Ventilators and galv. iron piping.
3 sand pans.
4 slack tubs.
7 augers.
4,300 feet pine lumber for machinery supports.
2,100 feet oak lumber for machinery support.
216 feet iron pipe fixtures.
1 doz. pat. oilers.
1 tennon saw and handle.
7 steel squares.
8 lathe dogs.
4 flue expanders.
3 ratchets.
2 screw plates & dies complete.
1 Blake's steam-gage tester.
674 lbs. Galv. iron pipe.
1,052 feet leather belting (2 to 12 in.).
2 belt punches.
1 screw punch.
1 pair sheet-iron shears.

22
1 water-tank, 16 x 18 feet.
1 well, 15 x 16 feet.
26 extra taps.
7 " reamers.
300 lbs. cast steel sledges.
500 lbs. wrought iron sledges.
880 lbs. " " tools.
340 lbs. cast steel tools.
45 lbs. " " wrenches.
488 lbs. wr't iron "
500 lbs. cast iron sledges, chucks, &c.
6 pinch bars.
478 lbs. cast steel planer & lathe tools.
1 doz. small Burch oilers.
1 Babcock fire extinguisher, No. 3.
2 augers for boring oil bbls.
6 coal buckets.
4 wheelbarrows.
2 push-cars.
8 coal boxes (5 large, 3 small).
30 trestles.
10 cupboards.
1 oil barrel rack.
1 large engine-rack.
5 large waste & tool boxes.
6 bolt & nut racks.
2 water troughs.

23
6 slates.
12 molasses gates.
1 switch rope.
25 feet 2½ in. 4-ply hose (in use).
50 tons lump coal, Barclay.
1 extra headlight.
1 wood-burner smoke-stack.
1 coal " "
1 extra pilot.

1,200 feet pine blocking.
1 office.
1 store-room.
1 building, 12 x 16 (shingle roof).
1 iron house, 18 x 32 (shingle roof).
1 sand house, 12 x 18 (shingle roof).
12 tons Blossburg coal.
10 tons nut & slack coal, Barclay.

24
2,182 lbs. brass castings.
308 lbs. " " finished up.
1,537 lbs. " scraps.
30,085 lbs. cast iron castings.
4,700 lbs. " " from Baldwin Works.
21,675 lbs. wrought iron.
1,750 lbs. cast steel.
1,060 lbs. frog "
1,677 lbs. spring steel.
1,195 lbs. sheet iron.
1,158 lbs. flange iron.
235 lbs. boiler "
385 lbs. flange iron made up for extra use.
258 lbs. sheet iron made up for extra use.
16 sq. feet netting, made up for extra use.

1 sett passenger truck frames.
7 finished crank pins.
4 unfinished " "
27 empty oil barrels.
9 drip pans.
4 funnels.
5 ½-gall. measures.
2 1 gallon "
3 yds. Canton flannel.
1 clock.

12,736 lbs. wrought iron, made up for extra use.
2,775 extra engine springs.
397 forged keys, bolts, &c.
41 33-inch wheels.
24 30-inch "
4 28-inch "
12 26-inch "
33 car axles.
11 engine trucks axles.
1 driving axle.
18 pairs old 33 in. wheels & axles (for freight in use).
5 engine truck boxes (fitted up).

25
6 piston rods.
21 new engine flues.
9 old " "
4 driving boxes.
1 engine front.
2½ brass engine pumps.
4 eccentric straps.
½ brass whistle.
1 sett threadle gearing.
6 pit cocks.
3 blow cocks.
5 cylinder cocks.
4 guage "
2 sett water cocks.

3 heater cocks.
48 sq. feet wire netting.
46 feet 2½ in. 4-ply hose.
54 " 1-in. " "
108 iron-safe ends.
3,000 lbs. square nuts.
800 lbs. hex. nuts.
600 lbs. washers.
400 lbs. $\frac{5}{16}$ twist chain.
130 lbs. tank rivets.
22 lbs. sheet-iron rivets.
2 foot valves.
17 12-in. Coe's screw wrenches.

26
13 15-in. Coe's screw wrenches.
5½ doz. files (12 to 14 inch.)
1 doz. small files.
5½ doz. ass'd files (now in use).
1 gross torpedoes.

20 Volute car springs.
250 fire-brick & bbl. fire-clay.
2 box glass, 18 x 18 & 19 x 28.
12 glass, 20 x 24.
9 oil cans (4 2-gall. & 5 1-gall.).

	1	brass cab lamp.
	2	" " " globes.
	4	headlight glass.
	1	doz. hickory split brooms.
	3	bbls. coke.
	80	feet leather belting (2 to 3 in.).
	8	Densmore's car springs.
	6	rubber " "
27	5	brushes for washing windows.
	1	whitewash brush.
	2	dozen cotton mops.
	8	switch locks & 2 doz. keys.
	4	doz. bell-cord couplings, plated.
	13	signal flags & staffs.
	1½	sides sole leather.
	3	car-door locks & keys.
	28	water-gauge glasses.
	5	plated telegraph cocks.
	3	bell-cord guides, fancy strap.
	20	brooms.
28	5	boxes matches.
	10	dope buckets.
	120	clinch nails.
	1,283	common "
	180	casing "
	14	gross ass'd screws.
	18	carriage bolts.
	3	pair strap hinges.
	10	pair cast-iron butts.
	6	paper bright tacks.
	2	lbs. brads.
	3	cast-iron ladles.
	1	" melting pot & 2 moulds.
	1	screw press & bolts for forcing on pins.
29	1	lb. Munich lake.
	18	lbs. white lead.
	15	lbs. red "
	75	lbs. mineral paint.
	150	lbs. raw umber.
	1	doz. paint & varnish brushes.
	300	galls. car oil.
	133	lard "
	78	signal "
	156	coal "
	52	engine "
	4	side car-lamps.
	150	coach candles.
	2	doz. water buckets.
	1¼	reams emory paper.
	1½	" sand "
	4	doz. lamp-wicks.
	6	coal-oil lamps, glass.
	8	" " " tin.
	27	small tin hand lamps.
	6	axes with handles.
	8	scoop-shovels.
	5	hand saws.
	5	hatches.
	360	stock bolts.
	65	white lanterns.
	42	red "
	63	white " globes.
	20	red " "
	7½	doz. lamp chimneys.
	8	" headlight "
	6	patent " wicks.
	3	centre car lamp globes.
	5	centre car lamp globes.
	25	coach cushions.
	21,300	feet oak timber.
	2,580	" Norway pine.
	4,350	" siding & flooring.
	230	" common boards.
	176	" black walnut.
	28	" poplar.
	4	hand-car cranks.
	6	skir wheels.
	4	pinions.
	9	galls. Englis' body varnish.
	1	gall. boiled oil.
	1	" turpentine.
	75	lbs. detergend.
	720	lbs. white waste.
	450	lbs. colored "
	5	lbs. pure rubber.
	17	lbs. rubber packing.
	120	lbs. hemp "
	5	lbs. rosin.
	8	lbs. spelta.
	50	lbs. bell cord.
	23	lbs. candle wick.
	8	lbs. chalk.
	76	lbs. soap.
	14	lbs. lampblack.

250 lbs. car grease.
350 lbs. tallow.

30 30 lbs. rotten stone.
45 lbs. emery.
251½ lbs. pig lead.
52½ lbs. antimony.
18 lbs. bar tin.
135 lbs. sheet copper.
36 lbs. bar copper.
30 lbs. brass pipe.
20 lbs. iron wire.
15 lbs. steel "
5 lbs. copper.
10 lbs. Babbett metal ex. l.
140 lbs. Tripoli.
155 feet steam pipe (1 to 2 in.).

31 13 p'k'g's large plain envelopes.
5 " small " "
4 " " addressed envelopes.
2 " large addressed envelopes.
50 report and pay-roll blanks.
3 office books.
1 time book.
1 sett telegraph instruments complete.
50 steel pens.
3 penholders.
1 inkstand.
1 bottle mucilage.
1 wash basin and dipper.

20 lbs. sulphur.
40 lbs. ar'tic metal.

92 feet steam-pipe fittings.
2 loads sand.
1 Horton chuck.
2 doz. coupling packing rings.
4 valve stems.
5 rocker shafts.
4 main valves.
190 feet 1½ in. rope blocks.
112 " 1 " " "
Lot of patterns.
Crane and coal buckets at Gilman.
8 quires note paper.

1,500 lbs. wrought iron scrap.
4,000 lbs. cast " "
54 G. C. & S. coal cars.
6 do. hay "
25 do. stock " (8 D. decks).
75 G. C. & S. box "
3 1st-class coaches.
2 old.
2 1st-class baggage cars.
2 old.
7 Baldwin engines (equipped).
1 McQueen engine (equipped).

32 DE WITT.

1 station sign.
3 benches.
1 lamp holder.
1 table & tel'h instruments.
1 ticket case.
1 bucket.
1 chair.
18 chucks.
1 front room.
1 w. bucket.
1 lantern.

1 telegraph sign.
1 stove & pipe.
1 reflector.
1 desk, contents, & table.
1 stove & pipe.
1 lamp & holder & reflector.
1 red flag.
1 waiting room.
2 oil cans.
1 broom.
5 bushel coal.

FARMER CITY.

1 fr't for'd imp. book.
1 " rec'd "
2 " f'w'd "
1 stove & pipe.
1 office desk.
1 " chair.

2 oil cans (signal & coal).
1 red flag.
1 local ticket case.
2 white lights.
1 standing lamp.
1 swinging "

2 passenger room settees.
1 telegraph cutout.
1 ticket stamp.
1 telegraph relay & key.
1 pair fr't trucks.

BELLEFLOWER.

1 car coal.
1 truck.
2 stoves.
1 ticket case.
2 lamps.
2 oil cans.

33 1 desk.
1 chair.
3 benches.
1 coal hod & shovel.
1 ticket stamp.
1 express pa. "
Freight books, blanks, bag-
gage " , stationery.

GIBSON.

1 desk.
2 stoves.
2 settees.
1 coal hod.
1 fr't rec'd book.
1 " for'd "
1 cash "
1 lantern.
1 chair.
1 G. C. and S. express stamp.
7 tons of coal.
1 " hod.
1 fire shovel.
1 ticket case.
2 coal oil lamps.
1 ticket stamp.
1 coal oil can.
1 lard " "
1 water bucket.

MELVIN.

1 writing desk (walnut).
Table & 2 telegraph instruments.
Ticket case (small walnut).
1 large table lamp (com.).
1 tin lantern.
1 coal hod.
Hog & cattle pen with chute.
3 settees (com.).
1 large stove & pipe.
1 small " " (Russia iron).
1 office chair.
1 " bracket lamp.
2 tin oil cans.
1 water bucket.
25 rail straps.
125 or 150 ties near the depot.

THAWVILLE.

1 ticket case.
1 stove and pipe.
1 shovel.
2 settees.

34 1 coal hod.
1 w. h. truck.
1 pinch bar.
1 red flag.
1 fr't book, received.
1 " " , forward.
1 receipt book.
Small quantity of blanks.
2 oil cans.
1 lantern.
Supply of coal.
1 cash book.
1 baggage "
2 tel. poles.
½ car load ties.

RIDGEVILLE.

15	G. C. and S. cars.	48	R. R. ties.
21	telegraph poles.	3	pass. waiting room benches.
1	office chair.	1	office desk.
1	ticket case.	2	lamps.
2	oil cans.	1	lantern.
1	broom.	1	heating stove & pipe.
1	fr't for'w'd book.	1	fr't rec'd book.
1	cash book.	1	baggage forw'd book.
1	extra baggage ticket book.	1	" rec'd book.
1	G. C. & S. Ridgeville stamp.	1	express receipt "
1	J. C. freight tariff.	1	G. C. & S. freight tariff.
1	switch lock, "B. O."	8	local baggage checks.
	A supply of blanks for freight & ticket department.		

Filed March 3, 1874.

L. F. DOLLOFF, *Clerk.*

35 *Report of receiver.*

In the circuit court of said county, of the May term, A. D. 1874.

STATE OF ILLINOIS,
McLean County, ss :

JOSEPH J. KELLY ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD RAILROAD COMPANY ET AL. } In chancery.

To the honorable Thomas F. Tipton, judge of the McLean circuit court :

Pursuant to the order of this honorable court your receiver submits the following report of the earnings, expenses of operation, and other matters of Gilman, Clinton & Springfield Railroad for the seven months from the 1st day of December, A. D. 1873, to the 1st day of July, A. D. 1874.

The gross earnings of the road have been $130,899.65 and the operating expenses for the same time are $76,386.08, or 58.3 per cent. of the earnings. For a detailed statement of the sources of earnings and the departments of expenditures, see the annexed table marked A.

The receipts since the date of my last report from all sources
36 have been as follows :

March,	1874	$26,270 56
April,	"	13,337 60
May,	"	25,595 12
June,	"	22,041 50
		$87,244 78

The disbursements for the same time have been as follows:

March, 1874		$26,111 10
April,	"	21,528 68
May,	"	14,159 55
June,	"	25,315 91
		$87,115 24

I am happy to report to the court that notwithstanding the present season, owing to the very light crops of last year, has been disastrous to the railway interest of the West, and has decreased the gross earnings of nearly all the railway lines in the State of Illinois, I have been able to keep the gross receipts of the Gilman, Clinton & Springfield Railroad fully up to the corresponding months of last year. The Toledo, Wabash and Western Railway, with which we have sharp
37 competition at Springfield, at Mount Pulaski, and at Gibson, three of our best shipping points, decreased in the month of June $152,657, or 28¼ per cent. Other competitors have suffered very large decrease in earnings.

Since the date of my last report I have purchased and put upon the road 101$\frac{1270}{2240}$ tons of new rails. This has relieved the same amount of old and partly worn rails, with which we have lengthened the side track at Belleflower and have put in a new side track to the elevator at Mount Pulaski. It is my purpose to put in a new side track at Barclay for the accommodation of grain and stock shippers (the present side track being used almost entirely for the coal business). It will be necessary to further increase the side-track capacity of the road next at Gibson and at other points as the business of the road may demand. The road and equipment is in improved condition and repair, and is fully able to do all the business that is offered. The employees are all fully paid up to the first of the current month. Your receiver has contracted no debts or liabilities, except small amounts for current expenses, for which
38 bills have not been rendered. All notes and acceptances given by the former administration have been paid on presentation. When your receiver took charge of the road there were a large number of orders, due bills, and time checks, which at first were very bothersome, but which, I am happy to state, have been all or nearly all paid.

The arrearages to employees on pay rolls have all been discharged, as far as they have applied, to the extent that your receiver was authorized to pay. In my last report I called the attention of the court to the fact, viz, that one great need of the road was fence, since which time I have purchased and used upon the road 130,000 feet of fencing, building the fence in the places most exposed to stock. There are a large number of claims made for stock killed and injured. Within the last two months I have been able to compromise several of these claims, but there are now reported over one hundred claims for stock killed and injured, varying in amounts from $5.00 to $300.00. Many of the claims are exhorbitant in amount, and the claimants unreasonable in their demands.
39 I am prepared to pay this class of claims as fast as they can be adjusted at what I deem a fair price.

There are quite a number of claims for right of way yet unsettled, and in several cases suits have been commenced. Your receiver has been unable to get access to the books of the company to ascertain just the status of these right-of-way claims. I have made out and filed in the several counties schedules of the property of the Gilman, Clinton & Springfield Railroad for taxation. Attached hereto, marked B, is a ta-

ble showing the assessment and taxes in the several counties for the year 1873. It will be observed that the gross assessment is 1,539,061; that the taxes for the year amount to $28,020.66; that the assessment on capital stock is $585,288; and that the tax sought to be collected on the capital stock is about $9,991.67. The whole tax is equal to about 13 per cent. of the gross receipts of the road for the year. Believing that this tax was unjust and exhorbitant, and during the vacation of this court, by the advice of counsel and with the co-operation of
40 the president of the road and other persons claiming to represent large amounts of the bonds of the road, I brought suit in the Sangamon circuit court, and obtained from Judge McAllister, of the supreme court, an injunction, which is yet in force. To obtain this injunction it became necessary for your receiver to personally sign the bond for the sum of $60,000. I also procured the signature of Henry Crawford to the said bond.

With the exception of claims for right of way and claims for stock injured until they are properly adjusted, I am happy to state that your receiver is prepared to pay all legitimate claims on presentation, and, in the absence of further instructions from your honorable court, will apply the net revenues of the road to the improvement of the property.

I am happy to state that there is a good feeling of friendship towards the road on the part of its patrons, and that the prospect is good for a large business during the remainder of the year.

Respectfully submitted.

F. E. HINCKLEY,
Receiver.

JULY 25, 1874.

41 A.

Statement of earnings.

EARNINGS.

	December, 1873.	January, 1874.	February.	March.	April.	May.	June.	Total, 7 months.
Freight	10,899 66	16,636 47	14,187 53	13,454 05	11,534 11	12,858 34	19,727 70	92,297 86
Passenger	3,570 40	3,178 57	2,525 73	2,844 34	2,218 68	2,166 20	3,507 95	20,011 87
Mail & Miscellaneous	872 85	784 96	1,730 73	686 73	3,192 80	1,931 70	2,390 15	11,589 92
Total	15,342 91	20,600	18,443 99	16,985 12	16,945 59	16,956 24	25,625 80	130,899 65

OPERATING EXPENSES.

	December, 1873.	January, 1874.	February.	March.	April.	May.	June.	Total.
Train service	984 80	951 42	867 24	704 81	677 62	772 58	746 53	5, 705
Engine "	1, 580 75	1, 362 85	1, 046 61	1, 086 10	1, 125 01	1, 114 26	1, 382 25	8, 697 83
Station "	1, 176 05	1, 029 07	1, 033 35	1, 123 35	1, 116 70	1, 019 20	1, 095 17	7, 592 89
Water "	280	280	280	322 75	280	280	280	2, 002 75
Repairs track	2, 319 09	2, 394 01	3, 495 56	3, 439 13	2, 928 22	3, 241 55	3, 308 29	21, 125 85
" bridges	76 45	95 10	58 88	46 48	68 23	43	109 87	498 01
" buildings	228 20	221 20	100 31	84 50	121 20	125 41	103 64	984 46
Loss & damage	14 40	15 83	.....	7 49	3	54 44	285 12	380 28
Fuel consumed	666 75	788	628 75	580 48	602 74	508	923	4, 697 72
General expenses	613 36	834 31	912 77	1, 003 80	557 51	662 80	1, 813 74	6, 398 29
Repairs cars	570 48	945 79	995 95	615 77	807 40	884 51	1, 133 08	5, 952 98
" locomotives	905 40	1, 017 88	630 15	160 02	627 92	1, 106 47	1, 242 53	5, 690 37
Miscellaneous	636 99	589 47	596 29	854 23	1, 232 37	761 72	1, 988 58	6, 659 65
Total	10, 052 72	10, 524 93	10, 645 86	10, 028 91	10, 147 92	10, 573 94	14, 411 80	76, 386 08

42 B.

Statement of valuation and taxes levied for A. D. 1873, on the G., C. & S. R R.

Counties.	Valuation.	State tax.	County tax.	Town tax.	School tax.	Special tax.	Registered bond tax.	Corporation tax.	Total taxes.
Iroquois	1, 270 08	457 60	190 67	.....	694 69	135 81	40 96	.....	$1, 519 73
Ford	3, 465 03	1, 247 44	1, 386 04	235 27	1, 504 42	505 67	1, 342 31	69 89	6, 291 04
Champaign	33 30	12 01	10	1 34	23 33	6 67	.....	.....	53 35
McLean	1, 471 61	529 78	618 06	56 01	759 91	270 81	711 46	.....	2, 937 03
De Witt	4, 738 70	1, 703 93	2, 132 28	428 27	4, 055 31	444 79	1, 526 12	373 99	10, 664 69
Logan	2, 300 16	828 06	690 05	112 67	1, 071 67	713 68	604 37	.....	4, 020 50
Sangamon	2, 111 73	857 06	557 58	73 96	463 88	263 54	.....	318 30	2, 534 32
Total	15, 390 61	5, 635 88	5, 584 68	907 52	8, 564 21	2, 340 97	4, 225 22	762 18	$28, 020 66

Filed Aug. 4, 1874.

S. F. DOLLOFF, *Clerk.*

43 STATE OF ILLINOIS,
McLean County, ss:

In the circuit court of said county of the February term, A. D. 1875.
In chancery.

JOSEPH J. KELLY ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD Railroad Company et al.

To the honorable Thomas F. Tipton, judge of said circuit court:

Your receiver respectfully submits this his annual report:

The earnings and operating expenses of the said Gilman, Clinton & Springfield Railroad for the year ending December 31st, 1874, are as follows:

Receipts from freight	$186,954 84
" " passengers	39,369 13
" " miscellaneous sources	26,166 20
Total receipts	252,490 17
Operating expenses	157,461 78
Net earnings	95,028 39

For details of said receipts and expenditures reference is made to tabulated statement marked A, hereto attached.

I also append hereto statements as follows, to wit: Statement
44 marked B, showing the earnings by months for 1873 and 1874, and statement marked C, showing the operating expenses by months for 1873 and 1874. By comparing the earnings and operating expenses for the years 1873 & 1874, as shown by the said statements B and C, it will be noticed that there is a small decrease in earnings and a large decrease in operating expenses in 1874. The gross earnings for 1873 were $253,314.97; for 1874, they were $252,490.17; showing a decrease of only $824.80, while the operating expenses for 1873 were $222,388.55, and for 1874 were $157,461.78, showing a decrease of operating expenses for 1874 of $64,864.77.

I have included in the operating expenses for 1874, my commissions 2½ per cent., on the receipts and the same on disbursements. The decrease in receipts is due to the very warm and open winter and spring of the year, which operated unfavorably on the coal trade, and the earnings from that source were greatly diminished. All that portion of the line north and east of Clinton, taking about 65 miles, suffered severely with the drouth, so that the crops along the line were almost a
45 failure. This took off largely from a very great source of revenue.

Another cause which operated greatly to reduce the gross receipts was the very low tariff we were compelled to make in competition with the roads running east and west. I have also prepared and attach hereto two statements showing the tonnage and movement of freight during the year. The statement marked D shows the movement of freight for the first six months, and the statement marked E shows the same for the last six months ending Dec'r 31st, 1874. These statements have been carefully prepared, and show the source of earnings and tendency of business. It will be seen, as shown by the statements, that for the first half of the year we moved to Chicago 1,426 cars with an average of $15.19 per car, while for the last half of the year we moved 1,676 cars, with an average earning of $15.14 per car. The general average for all cars handled for the first six months was $14.77 per car; for the last six months it was $15.38, and for the year $15.09. In order to explain the low earnings per car for the first six months, it will be observed
46 that we moved 280 cars of coal from Barclay to Springfield at $2.50 per car, and 300 cars of iron ore from Clinton to Springfield at $6.00 per car.

The business from Chicago for the first six months only reached 797 cars at $19.84 each, while for the last six months it was 1,134 cars at an average of $19.98 per car. The local business for the two halves of the year is very similar, being 2,127 cars the first six months against 2,094 cars for the last six months; but it will be observed that while we earned an average $11.48 per car the first six months, the average per car for the last six months reached $14.64. It will also be noted that the busi-

ness of the road aside from that to Chicago was principally interchanged with the Springfield and Illinois Southeastern road at Springfield for points west and southwest and east to Baltimore by way of the Baltimore & Ohio road. The greatest amount of business going east over the line went by way of Gilman, on the Pittsburg, Cincinnati & St. Louis road, to Philadelphia and New York.

47 I also append hereto an annual statement, marked F, from the locomotive department, showing for each locomotive the number of miles ran, both for freight and passenger service, the amount of fuel, oil, and waste used, and the cost of materials and labor used in repairs.

By an examination of this statement it will be seen that the eight locomotives made a total mileage of 231,280 miles, and the total cost per mile for each, including the wages of engineers, firemen, wipers & expenditures for supplies, was $15\frac{39}{100}$ cents. Each locomotive used a pint of oil $12\frac{49}{100}$ miles run, and one ton of coal for $46\frac{34}{100}$ miles run. That it cost $1\frac{76}{100}$ cents per mile for oil, tallow, and waste used, and $4\frac{58}{100}$ cents per mile for fuel, while the repairs per mile amounted to $3\frac{58}{100}$ cents.

The repairs of engines during the year were fully kept up, and it is due the locomotive department to say that it has been managed with prudence and economy.

48 In my last report I informed the court of the procurement of injunctions against the various tax collectors along the line, restraining them from the collection of State and other local taxes for the year 1873. The suit was brought to a hearing in the Sangamon circuit court, which resulted in a dissolution of the injunction. Your receiver took an appeal to the supreme court of this State, and executed the necessary bonds. The prosecution of the suit is in charge of H. Crawford, esq., attorney. The total taxes levied for 1873 & 1874 for State & other purposes are as follows:

For 1873	$28,020 66
" 1874	12,849 98
Making total liability at this date for taxes	$40,870 64

It will be necessary, during the current year, to renew many of the cross ties, especially on the east 34 miles of the road, which was laid with hemlock ties. Many of them are now rotten and broken, and are only held together by the frost. It will be necessary to commence the renewal as soon as the condition of the ground will permit.

49 The rails are showing signs of lamination, and a renewal of a portion of the track will also be necessary during the year. My estimate is that with our present traffic it will be requisite to renew the track with iron rails at least once in seven (?) years. At this rate it would require, say, 1,400 tons of iron each year. At present the cost of rerolling would require an annual expenditure of about $45,000. There was expended on this account during the past year $7,277.61, which is not included in operating account. It is assumed that iron rails may be indefinitely rerolled. Assuming the same space of time for the life of the ties, it would require about $22,000 per year to renew the ties. A similar estimate for bridges, trestles, and buildings would require $15,000 per annum.

There are several pieces of trestle work along the line which require attention. A large portion of the trestle work ought either to be filled up with earth or renewed. The greatest care is required to prevent accidents at these points, and it will be necessary to make large

50 expenditures on this account during the present year.

I have expended, during the year 1874, on account of new fencing, $5,173.85, and estimate that it will be necessary to expend fully as much during the present year. Nearly all the claims for stock killed at the time your receiver took charge of the road have been settled and paid. Your receiver has paid, on account of notes, bills and pay-rolls owing by the company at the time the road was placed in his charge the sum of $46,264.28.

While it is gratifying to your receiver that he has been enabled to very greatly decrease the operating expenses for 1874, as compared with the previous year, while maintaining about the same gross earnings, yet it is a question of very great doubt in the opinion of your receiver whether the net earnings of the road for several years to come, from the low tariff in force during the past year, will be sufficient to keep entirely good the "plant" with all its appointments, the renewal of the track and superstructure, and actual depreciation of rolling stock,
51 buildings, and fences. It is patent that we cannot do business at a higher tariff, so that the future value of the property depends upon an increase of business, but with the increase of business we must expect greater competition, and perhaps lower rates. During the last year the line has been crossed at Kenna by the Illinois Midland Railroad, greatly reducing the revenue at that point. It will also be observed that this line of itself is but 111 miles in length, that it has six competing points, and that there are eleven competing lines, seeking the same markets; and by a careful examination of the map it will be noticed that every station is more or less affected by sharp competition.

It is gratifying to your receiver to report that the year has passed without an accident causing the death of any passenger or employee.

I desire to acknowledge the skill and enthusiastic zeal with which the several heads of departments have striven to accomplish the favorable results of the year, as also the general good conduct of the employees of the road to produce the above results.

Respectfully submitted.

F. E. HINCKLEY,
Receiver G., C. & S. R. R.

Statement of earnings and operating expenses of the Gilman, Clinton, and Springfield Railroad, for the year ending Dec. 31, 1874.

	January.	February.	March.	April.	May.	June.	J	August.	September.	October.	November.	December.	Aggregate.
EARNINGS.													
Freight	16,636 47	14,187 53	13,454 05	11,154 15	12,858 34	19,727 70	18,272 03	18,092 53	18,173 92	19,461 26	14,315 73	10,241 17	186,954 84
Passenger	3,178 57	2,525 73	2,844 34	2,818 68	2,166 20	3,507 95	3,569 04	4,072 17	3,640 02	4,420 26	3,161 67	4,064 50	39,369 13
Miscellaneous	784 96	1,730 73	686 73	3,192 80	1,931 70	2,390 15	1,953 47	2,495 49	2,165 85	3,014 89	3,160 27	2,659 16	26,166 20
Total	20,600 00	18,443 99	16,985 12	16,945 59	16,956 24	25,625 80	23,794 54	24,660 19	23,979 79	26,896 41	20,637 67	16,964 83	252,490 17
OPERATING EXPENSES.													
Train service	951 42	867 24	704 81	677 62	772 58	746 53	763 31	792 31	795 37	765 31	1,179 80	1,164 63	10,180 93
Engine "	1,362 85	1,046 61	1,086 10	1,125 01	1,114 26	1,382 25	1,384 52	1,330 49	1,332 37	1,530 91	1,597 69	1,331 60	15,624 66
Station "	1,029 01	1,033 35	1,123 35	1,116 70	1,019 20	1,095 17	1,045 16	1,513 30	1,102 51	1,465 82	1,344 60	1,361 49	14,249 72
Water "	280	280	322 75	280	280	280	280	280	280	280	212 70	225 10	3,243 55
Track repairs	2,394 01	3,495 56	3,439 13	2,928 22	3,241 55	3,308 29	6,614 48	3,623 88	3,597 06	5,796 01	3,127 63	2,396 07	43,961 89
Bridge "	95 10	58 88	46 48	68 23	43	109 87	118 87	82 63	35 35	207 43	70 22	48 75	984 81
Building "	221 20	100 31	84 50	121 20	125 41	103 64	81 16	84 89	197 21	83 26	163 85	247 35	1,613 98
Loss & damage	15 83		7 49	3	84 44	285 12	254 56	9 50	10 60	70	217 50	209 15	1,137 34
Fuel	788	628 75	580 48	602 74	508	923	657	10	703	799 70	2,004 25	774 40	8,979 32
General expenses	1,878 02	2,102 72	2,313 34	1,429 17	1,656 62	3,097 67	2,394 03	1,743 41	1,599 72	2,025 02	1,924 19	2,100 57	25,113 61
Car repairs	945 79	995 95	615 77	807 40	884 51	1,113 08	1,265 37	889 68	1,006 46	2,788 28	344 49	404 79	10,081 57
Locomotive "	1,017 88	630 15	160 02	627 92	1,106 47	1,247 53	936 20	977 91	973 93	643 26	386 90	888 69	9,591 86
Miscellaneous	589 47	596 29	854 23	1,232 37	761 72	1,988 58	1,894 47	609 51	472 85	714 43	1,906 51	1,078 11	12,698 54
Total	11,568 64	11,835 81	11,338 45	11,019 58	11,567 76	15,693 73	17,589 22	11,947 51	12,106 49	15,129 43	14,480 33	12,233 70	157,461 78

B.

Earnings of the Gilman, Clinton & Springfield Railroad, for A. D. 1873.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Aggregate.
EARNINGS.													
Freight	13,257 04	15,336 61	12,556 18	13,717 12	12,739 50	20,203 54	17,594 05	23,758 41	18,557 22	18,794 81	16,208 55	10,899 66	193,622 69
Passenger	3,392 89	3,427 51	4,254 96	4,019 87	3,552 32	3,848 25	4,915 37	7,002 63	4,321 25	4,128 51	3,222 94	3,570 40	49,656 90
Miscellaneous	697 41	716 95	800 54	864 77	870 36	943 87	857 88	908 23	876 35	831 60	794 57	872 85	10,035 38
Total	17,347 34	19,481 07	17,611 68	18,601 76	17,162 18	24,995 66	23,367 30	31,669 27	23,754 82	23,754 92	20,226 06	15,342 91	253,314 97

Earnings of the Gilman, Clinton & Springfield Railroad, for A. D. 1874.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Aggregate.
EARNINGS.													
Freight	16,636 47	14,187 53	13,454 05	11,534 11	12,858 34	19,727 70	18,272 03	18,092 53	18,173 92	19,461 26	14,315 73	10,241 17	186,954 84
Passenger	3,178 57	2,595 73	2,844 34	2,218 68	2,166 20	3,507 95	3,569 04	4,072 17	3,640 02	4,420 26	3,161 67	4,064 50	39,369 13
Miscellaneous	784 96	1,730 73	686 73	3,192 80	1,931 70	2,390 15	1,953 47	2,495 49	2,165 85	3,014 89	3,160 27	2,659 16	26,166 20
Total	20,600 00	18,443 99	16,985 12	16,945 59	16,956 24	25,625 80	23,794 54	24,660 19	23,979 79	26,896 41	20,637 67	16,964 83	252,490 17

Operating expenses of the Gilman, Clinton and Springfield Railroad, for A. D. 1873.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Aggregate.
Total..	21,808 85	17,441 16	15,981 57	16,576 32	26,439 26	21,292 89	21,610 10	15,990 93	16,441 57	17,791 65	19,331 84	11,602 41	222,308 55

Operating expenses of the Gilman, Clinton and Springfield Railroad, for A. D. 1874.

	January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Aggregate.
Total..	11,568 64	11 835 81	11,338 45	11,019 58	11,567 76	15,695 73	17,589 22	11,947 51	12,106 49	15,129 43	14,480 33	12,233 70	157,461 78

D.

Gilman, Clinton & Springfield Railroad.

Statement showing movement of freight, earnings, &c., for six months ending June 30th, 1874.

	Forwarded car-loads.													Received car-loads.					Car-loads.		Remarks.
	To Chicago.						East via P. C. & S. & L. R. R. for Balt., Phila., New York, & Boston.					East via S. & I. S. E. R. R. to Baltimore.		From Chicago.			From P. C. & St. L. R. R.		Local.		
	Grain.	Cattle.	Hogs.	Coal.	Un'd.	Total.	Grain.	Cattle.	Hogs.	Un'd.	Total.	Grain.	Total.	Lumber.	Un'd.	Total.	Unenumerated.	Total.	Unenumerated.	Total.	
Springfield	.....	104	103	...	....	.....	4	1	....	....	.....	.....	.....	239	.....	.....	32	....	.....	114	Competition with Chi. & Alton, Springfield & Ills. So. E. & Toledo, Wabash & Western R. Roads.
Barclay	2	.....	.....	278	....	.....	2	....	....	....	....	26	.....	1	.....	.....	.....	....	.....	803	
Cornland	.....	22	27	....	....	.....	13	6	....	....	.....	78	.....	12	.....	.....	3	....	.....	11	
Mt. Pulaski	.....	11	37	....	....	.....	113	6	....	....	.....	168	.....	39	.....	.....	.....	....	.....	43	Competition with Toledo, Wabash & Western R. R.
Chesnut	3	21	14	....	....	.....	70	5	....	....	.....	87	.....	6	.....	.....	.....	....	.....	18	
Kenney	8	1	21	....	....	.....	27	1	....	....	.....	307	.....	19	.....	.....	.....	....	.....	53	
Clinton	.....	9	25	....	....	.....	34	2	....	....	.....	48	.....	44	.....	.....	4	....	.....	373	Competition with Ills. Central & Indianapolis, Bloomington & Western R. Ro's.
Dewit	.....	21	27	....	....	.....	.....	.....	....	....	.....	.....	.....	8	.....	.....	.....	....	.....	54	
Fullerton	.....	64	44	....	....	.....	.....	8	....	....	.....	.....	.....	1	.....	.....	.....	....	.....	22	
Farmer City	.....	27	57	....	....	.....	5	3	....	....	.....	.....	.....	47	.....	.....	1	....	.....	39	Competition with I. B. & W. R. R.
Belleflower	1	8	16	....	....	.....	61	....	....	....	.....	114	.....	22	.....	.....	.....	....	.....	200	
Gibson	3	34	37	....	....	.....	50	....	....	....	.....	2	.....	56	.....	.....	.....	....	.....	140	Competition with Chi. & Paducah & Toledo, Wabash & Western R. R's.
Melvin	104	.....	6	....	....	.....	112	....	....	....	.....	48	.....	26	.....	.....	.....	....	.....	119	
Roberts	117	.....	11	....	....	.....	157	....	....	....	.....	16	.....	53	.....	.....	.....	....	.....	70	
Thawville	80	2	27	....	....	.....	4	....	....	....	.....	.....	.....	19	.....	.....	4	....	.....	33	
Ridgeville	9	.....	.....	....	....	.....	8	....	....	....	.....	.....	.....	.....	.....	.....	.....	....	.....	.....	
Gilman	.....	.....	.....	....	....	.....	.....	....	....	....	.....	.....	.....	.....	.....	.....	.....	....	.....	35	
All stations	.....	.....	.....	....	45	.....	.....	....	....	....	.....	.....	.....	.....	199	.....	5	....	2, 127	.....	
Total	327	324	452	278	45	1, 426	660	32	....	....	692	894	894	598	199	797	49	49	2, 127	2, 127	

RECAPITULATION & REVENUES.

	No. of cars.	Actual weight.	G. C. & S. prop. freights.	Average per car.
To Chicago	1,426	28,509,859	21,658 10	15 19
East via P. C. & St. L. R. R.	692	15,231,755	11,391 52	16 46
" " S. & I. S. E. R. R.	894	19,668,800	14,357 90	16 06
From Chicago	797	15,933,766	15,827 18	19 84
P. C. & St. L. R. R.	49	988,881	740 84	15 12
Local	2,127	42,542,891	24,422 66	11 48
Total	8,985	122,875,252	88,398 20	

General average 14.77 per car. The low local average is accounted for from the fact that some 280 cars having been hauled, Barclay to Springfield, at 2 50 per car and 300 cars iron ore, Clinton to Springfield, at 6.00 per car.

E.

GILMAN, CLINTON & SPRINGFIELD RAILROAD.

Statement showing movement of freight, earnings, &c., for six months ending December 31st, 1874.

	Forwarded car-loads.													Received car-loads.					Car loads.		Remarks.
	To Chicago.						East, via P. C. & St. L. R. R. to Baltimore, Philad'a, New York, & Boston p'ts.					East, via S. & I. S. E. R. R. to Balt.		From Chicago.			From P. C & St. L. R. R.		Local.		
	Grain.	Cattle.	Hogs.	Coal.	Un'd.	Total.	Grain.	Cattle.	Hogs.	Un'd.	Total.	Grain.	Total.	Lumber.	Un'd.	Total.	Unenumerated.	Total.	Unenumerated.	Total.	
Springfield	5	113	152	....	....	....	13	....	....	....	....	....	....	367	....	....	65	....	....	....	Competition with Chi. & Alton, Springfield & I. S. Eastern & Toledo W. W. R. R.
Barclay	5	7	....	34	....	....	....	....	....	....	....	17	....	....	....	....	....	....	....	....	
Cornland	5	17	43	....	....	....	19	....	....	12	....	30	....	11	....	....	1	....	....	....	
Mt. Pulaski	2	5	60	....	....	....	256	....	....	....	....	15	....	61	....	....	1	....	....	....	Competition with Toledo W. & W. R. R.
Chesnut	39	3	25	....	....	....	116	....	....	....	....	20	....	5	....	....	....	....	....	....	
Kenney	84	....	32	....	....	....	56	....	....	....	....	55	....	39	....	....	....	....	....	....	
Clinton	18	2	35	....	....	....	58	....	....	....	....	30	....	76	....	....	5	....	....	....	Competition with Ills. Cent. & Indianapolis, B. & W. R. R.
De Witt	1	4	29	....	....	....	6	....	....	....	....	....	....	2	....	....	....	....	....	....	
Fullerton	....	55	....	....	....	....	9	....	....	....	....	....	....	2	....	....	....	....	....	....	
Farmer City	20	25	75	....	....	....	124	....	....	....	....	50	....	81	....	....	....	....	....	....	
Belleflower	22	17	12	....	....	....	144	....	....	....	....	10	....	42	....	....	....	....	....	....	Competition with L., B. & W. R. R.
Gibson	3	63	67	....	....	....	235	....	....	....	....	70	....	55	....	....	2	....	....	....	Competition with Chi. & Paducah & Toledo W & W. R. R.
Melvin	113	....	16	....	....	....	21	....	....	....	....	....	....	35	....	....	....	....	....	....	
Roberts	155	....	27	....	....	....	22	....	....	....	....	5	....	69	....	....	3	....	....	....	
Thawville	171	2	27	....	....	....	13	....	....	....	....	....	....	12	....	....	....	....	....	....	
Ridgeville	19	....	1	....	....	....	2	....	....	....	....	....	....	2	....	....	....	....	....	....	
Gilman	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	
All stations	....	....	....	....	66	....	....	....	....	13	....	....	....	....	275	....	16	....	2,094	....	
Total	662	313	601	34	66	1,676	1,094	....	2	13	1,109	302	302	859	275	1,134	93	93	2,094	2,094	

RECAPITULATION & REVENUE.

	No. cars.	Actual weight.	G. C. & S. prop. freight.	Average per car.
To Chicago	1,676	32,646,384	25,389 17	15 14
East, via P. C. & St. L. R. R.	1,109	24,979,435	14,764 43	13 31
" " S. & I. S. E. R. R.	302	6,644,000	3,963 12	13 12
From Chicago	1,134	22,710,632	22,658 42	19 98
" P. C. & St. L. R. R.	93	1,861,679	1,124 48	12 09
Local	2,094	41,879,631	30,657 02	14 64
Total	6,408	130,721,761	98,556 64	15 38

F.

GILMAN, CLINTON AND SPRINGFIELD R. R.—(F. E. HINCKLEY, *Receiver.*)

Locomotive report for year 1874.

No.	Name.	Builder.	Size of cylinder.	Miles run.			Pints engine oil.	Pints lard oil.	Pints kerosene oil.	Pounds of tallow.	Pounds of waste.	Cords of wood.	Tons of coal.	Expenses				Miles run to 1 pint oil.	Miles run to 1 ton coal.
				Pass.	Freight.	Total.								Labor for repairs.	Material for repairs.	Oil, tallow, and waste.	Wood & coal.		
1	S. H. Melvin	Baldwin	15 x 22	2,437	24,756	27,193	1,268	98	288	518	366	20¼	565	$396 38	$170 43	$150 88	$1,217 75	12.52	48.13
2	Wm. Fuller	"	"	3,855	26,007	29,862	1,196	182	330	598	426	27	648	395 96	1,181 75	169 54	1,377	12.95	46.08
3	C. H. Moore	"	15 x 24	2,225	32,046	34,271	1,484	144	412	683	447	31	756	393 20	200 53	183 49	1,605	12.58	45.33
4	J. T. Stuart	"	"	.....	24,012	24,012	1,164	172	390	590	391	21	612	1,347 40	483 93	167 24	1,287	10.36	39.23
5	J. Williams	"	"	700	23,012	23,712	944	80	296	523	293	22¼	551	1,385 92	687 06	127 51	1,169 50	12.86	43.03
6	G. H. Black	"	"	38,353	11,883	50,236	1,782	312	256	997	545	37¼	848	559 37	422 56	237 72	1,808 50	15.00	59.24
7	E. Wenger	"	16 x 24	.....	13,261	13,261	696	140	180	290	234	12½	335	484 53	154 21	93 43	707 88	10.15	39.58
8	A. S. Guthrie	McQueen	"	.....	28,733	2,873	1,312	178	380	630	435	26½	675	831 06	168 73	180 66	1,430 25	11.49	42.56
	Total			47,570	47,570	183,710	231,280	9,846	1,306	2,532	4,829	3,137	207¾	4,990	5,793 82	2,469 20	1,310 47	10,602 88	.....	.....

RECAPITULATION.

Total number of miles run	231,280
Average miles run to one pint of oil	12.49
Average miles run to one ton of coal	46.34
Average cost per mile for oil, tallow, and waste, in cents	.01.76
Average cost per mile for fuel in cents	.04.58
Average cost per mile for repairs in cents	.03.57
Total cost per mile run	15.39

NOTE.—The total cost per mile run includes the wages of engineers, firemen, and wipers, and all expenditures appertaining to repairs and supplies. Wood is rated at $3.00 per cord; coal at $2.00 per ton. One pound of tallow is rated as one pint of oil. Freight engines are allowed six miles per hour for switching while running regular trains.

Filed April 8th, 1875.

S. F. DOLLOFF, *Clerk.*

58 *Report of receiver.*

STATE OF ILLINOIS,
McLean County, ss:

In the circuit court of said county, of the June term, A. D. 1875. In chancery.

JOSEPH J. KELLY ET AL.
vs.
THE GILMAN, CLINTON AND SPRINGFIELD RAILroad Company et al.

To the Hon. Thomas F. Tipton, presiding judge of the McLean County circuit court:

Your receiver respectfully submits this report for the first half of the year 1875.

The earnings and operating expenses of the Gilman, Clinton and Springfield Railroad for the six (6) months ending June 30th, 1875, are as follows:

Receipts from freight	90,627 01
Passenger	21,752 44
Miscellaneous	7,277 37
Total receipts	119,656 82
Operating expenses	95,411 65
Net earnings	24,245 17

For a more full and detailed monthly statement of receipts and expenditures reference is made to the tabulated statements
59 marked A & B hereto attached.

The figures for the month of June are approximated as the reports are not all in, but are believed to be nearly correct.

I also append hereto a statement marked C, showing the movement of freight for the six months, giving the number of cars from and to each station on the line during the time. Also statement marked D, showing the movement of cars for the six months just closed, and for the corresponding six months of 1874, showing the "forwarded" and "received," and the increase and decrease of the different kinds of freight.

By a careful examination of these tables it will be seen that there was moved during the year 1875, 6,198 cars for the same period in 1874, 5,985, showing an increase of 213 cars. During the same time cars in the local business have decreased 1,328. It is gratifying to note that the freight earnings for the first six (6) months of 1875 are $2,228.81 in excess of the earnings for the same period last year. It will be
60 further seen that the average earnings per car hauled is $14.62, while the cars in the local business only earned $11.28. The business received from the P. C. and St. L., being mostly merchandise, averaged $21.13 per car, while that from the Illinois Central Railroad being largely merchandise averaged $20.68, while the business from the line over the Illinois Central to Chicago earned an average of $14.65. That going east by Pittsburgh, Cincinnati and St. Louis Railway averaged $13.84.

While it is true that the whole business for the six months has increased 213 cars, yet the local business has decreased 1,328 cars; at the same time the through business, or business not originating on the road has increased 1,541 cars, and the earnings on this foreign business is larger per car than the local business, and is larger than the average of all the business. No effort has been spared to increase this business, and the results are very gratifying to your receiver.

In order to satisfy what seemed to be a reasonable demand for increased passenger facilities, your receiver in the month of Janu-
61 ary arranged with the Illinois Central Railroad Company to run sleeping-cars between Chicago and Springfield. This experiment was at first tried by an arrangement with the Illinois Central Railroad Company, by which your receiver was to have the sleeping cars free of mileage, but as the business did not prove as good as the expectations of the Illinois Central Railroad Company had been led to believe, it demanded that the sleeping-cars be taken off, or that your receiver pay mileage for the cars. After a careful consideration of the matter it was agreed that your receiver should pay three (3) cents per mile for the use of the sleeping-cars, and that the repairs and expenses of running the cars should be paid by each party in proportion to the miles run, and that the earnings from the cars should be divided pro rata per mile.

It is gratifying to your receiver to note that during the six months the passenger earnings of the Gilman, Clinton and Springfield Rail-
62 road has increased five thousand three hundred ten and $\frac{97}{100}$ ($5,301 $\frac{97}{100}$) dollars. This increase is due entirely to increa sed facilities and accommodation of the sleeping cars, and in addition to the increased passenger earnings there is no doubt that the increased freight earnings are, to some extent, due to the increased passenger facilities.

When it is understood that at the commencement of the year the line was almost bare of anything looking like business, and that nearly all of the roads in this State show a large decrease in earnings, it is very gratifying to your receiver to note an increase in both freight and passenger earnings for the half year.

A new feature of business has been opened and developed with very gratifying results by making the Gilman, Clinton and Springfield Railroad a part of a through line between the Mississippi River and Chicago. This has been done by making a connection with the Toledo, Wabash and Western Railway at Springfield. This line was opened in
63 January, with the following results:

Carloads of live stock.

Received from the	T.	W.	and	W. during Jan'y	17
"	"	"	"	Feb'y	99
"	"	"	"	March	148
"	"	"	"	April	190
"	"	"	"	May	200
"	"	"	"	June	421
					1,075

The indications are that this business will increase and become the principal business of the road.

In order to do this through business it was necessary to put in a track connecting the Gilman, Clinton and Springfield Railroad with Toledo, Wabash and Western Railway, the two roads joining and each paying

one-half of the expense; it was necessary to pay as rental for the land on which the Y is laid one hundred and fifty $\frac{00}{100}$ ($150.00) dollars. This lease expires October first next, and cannot be renewed except at a much higher rate. A proposition has been made your receiver by the receiver of the Toledo, Wabash and Western Railway to join in the purchase of land enough at that point to put in a permanent Y. To do
64 this as it should be done it will cost about five thousand $\frac{00}{100}$ ($5,000.00), dollars one-half to be paid by the T., W. and W. R'y. The proposition has been accepted and the permanent track will be put in as soon as the arrangements can be perfected.

There is an additional reason for making this connection permanent; the curvature of the track now in use is so great that it is attended with great difficulty to get cars around it and is too short to run sleeping-cars around. When the new track is completed it is proposed to run the sleeping-cars from Chicago via the Illinois Central Railroad the G. C. & S. R. R., and the Toledo, Wabash and Western Railway, to Hannibal, and it is believed that this arrangement will greatly increase the business of the road.

At the time your receiver took possession of the Gilman, Clinton and Springfield Railroad he made an inventory of the rolling-stock and filed a copy of the same with his first report to this court. Said inventory was made on information furnished by *by* the former officers of
65 said railroad company, but this information was afterwards found to be incorrect, and your receiver in his report to the railroad and warehouse commissioners for the year ending June 30th, 1874, made what he believed to be a correct report. Refer to the published report for 1874, page 117, the number of cars received on the road by your receiver is as follows: 155 box-cars; 6 hay-cars made from flat or coal cars; 65 stock-cars and 84 coal-cars, in all 310 cars. The track through city of Springfield is occupied jointly by G., C. & S. R. R. and the Ohio and Mississippi R. R. A division of the track has been made, each party maintaining its proportion. The joint business of the two roads with the necessary amount of switching on this track wears out the rails very rapidly. Your receiver is of the opinion that it is economy to lay this common track with steel rails, and he has purchased for that purpose fifty (50) tons of steel rails at seventy $\frac{00}{100}$ ($70.00) dollars
66 per ton to be put in this common track during the next sixty (60) days.

As stated in my last report the soft wood ties on the east end of the line are showing signs of decay, and it will be necessary during the months of August, September, and October to put in twenty thousand (20,000) to thirty thousand (30,000) new ties. It is proposed to make the renewal with oak ties; about five thousand (5,000) have already been put in the track during the spring; additional purchases have been made to be delivered immediately.

The rails are showing increased signs of lamination and it will be necessary to purchase a few tons of new iron rails and to have the old rails rerolled; this will be done from time to time as the wants of the case require.

The safety of the road and the demands of property owners along the line require the building of a large amount of new fence; this can be done during the next three or four months better than at any other time during the year. One hundred thousand feet of fencing has been
67 purchased at ten $\frac{00}{100}$ ($10.00) per thousand in Chicago and additional will be purchased from time to time to meet the requirements of the case.

While your receiver is confident of a good business for the remainder of the year and estimates a large increase over last year, yet he believes it will be necessary to expend most of the balance in his hands for steel and iron rails, new ties, and fencing, and other necessary repairs and improvements.

Complaint having been made to this honorable court that your receiver is interested in other and competing lines which he was using to the disadvantage of this line, your receiver begs leave to append hereto a statement marked E, showing the date and number of cars received from the Chicago and Paducah Railroad at Gibson from Nov. 1st, 1873, to May 31st, 1875, showing that during that time 38 cars had been received from said Chicago and Paducah R. R., on which the G., C. & S. R. R. earned $412.90, all of which is new business and would not have been
68 handled by the G., C. and S. R. R., except by its connection with the Chicago and Paducah Railroad.

Also statement marked F showing the cars delivered to the Chicago and Paducah Railroad at Gibson from Nov., 1873, to May 31st, 1875, inclusive, and during that time twenty cars were delivered to the Chicago and Paducah R. R. on which the G., C. and S. earned $253.95.

Also tabulated statement marked G, showing car loads received from Chicago via the Chicago and Paducah R. R. On all this business your receiver obtained the same division at Gibson as is made with the Illinois Central R. R. at Gilman, saving thereby the expense of hauling 122 cars 29 miles each. Your receiver would respectfully state that not a single car has been delivered to the Chicago and Paducah road loaded for Chicago or any other point in competition with the Illinois Central Railroad since his administration of the G., C. and S. R. R.

I would respectfully inform this honorable court that the taxes
69 for the year 1874, both State, county and municipal, have been paid; also that the schedules which are required by law to be filed with the different county clerks for the year 1875, have been fully prepaid and filed.

On the 8th day of April last past a violent storm visited the line of the G., C. and S. Road, doing much damage at various places, but more particularly to the round-house at Clinton. This building was a brick structure with stalls for ten (10) engines. Nearly the entire structure was razed to the ground. It would cost about ten thousand $\frac{00}{100}$ ($10,000.00) dollars to reproduce this round-house in a good substantial manner. After looking the matter over carefully, your receiver was of the opinion that the best interests of the road did not require the immediate re-building of said round-house. He has therefore repaired so much of said round-house as to make room for three locomotives, which is sufficient for the present business of the road. This has been done at
70 a cost of not to exceed one thousand $\frac{00}{100}$ ($1,000.00) dollars, and will be entirely sufficient for the present year.

The company not owning the land on which the depot stands at Kenney it will be necessary to make some provision for depot grounds at that place, as the lots on which the depot now stands have been recently sold and cannot be purchased by your receiver at reasonable rates. At this point the line of the G., C. & S. road has recently been crossed by the Illinois Midland Railroad. By moving the depot about one thousand (1000) feet to the southwest it would be more convenient for the business of the town and make a better location for the depot. Your receiver is now negotiating for land on which to move said depot building.

In accordance with the instructions of this court I have the honor to submit a statement marked H, showing the receipts and disbursements for the (6) months; also a statement hereto attached marked H,
71 showing cash on hand at the end of each month, showing a balance in my hands, on the first day of July, of fifty-two thousand two hundred six and $\frac{39}{100}$ ($52,206.39) dollars.

All money earned, collected, or received by your receiver has been deposited with the Ridgely National Bank of Springfield in the name of your receiver as receiver. From this bank money is drawn to pay the rolls and such bills as can be conveniently paid there, but as nearly all the supplies are purchased in Chicago, your receiver found it necessary to keep a part of the funds in Chicago, and from time to time the funds have been drawn from the Ridgely National Bank at Springfield and deposited in the Third National Bank of Chicago in the individual name of your receiver, and from there checked out to pay bills as required.

Agreeable to the order of this court I herewith file duplicates or copies of all the vouchers paid by me, commencing with voucher No. 1, Dec. 3d, 1873, and running to No. 711, which closes the business of the
72 year 1874, and commencing with No. 800 for the business of 1875, and closing the June payment with No. 1176.

I' addition to the above I have paid sixty-seven (67) vouchers on old account, which vouchers were made, approved and entered on the books of the company prior to the date your receiver took possession of the road, and are filed herewith, the numbers corresponding to the numbers on the books of the company in the possession of your receiver. I also file vouchers and copies of certain notes paid.

Appended hereto, marked I, is a list of vouchers paid on other than operating account, commencing with December, 1873, and closing with June, 1875, amounting to eighty-three thousand nine hundred eleven and $\frac{01}{100}$ ($83,911$\frac{01}{100}$) dollars.

The taxes for the year 1873, amounting, as before reported, to twenty-eight thousand twenty and $\frac{66}{100}$ ($28,020$\frac{66}{100}$) dollars, and, with the costs, added, to something over thirty thousand $\frac{00}{100}$ ($30,000) dollars,
73 remain unpaid. The case as before reported stands in the supreme court on appeal from the Sangamon circuit court. It is expected that a decision will be reached soon. It will be remembered that your receiver gave his personal bond on the appeal.

All of which is respectfully submitted.

F. E. HINCKLEY,
Receiver.

7 A.

Statement of earnings for six months ending June 30th, 1875.

Earnings.	January.	February.	March.	April.	May.	June.	Total.
Freight	12,323 54	14,112 38	15,569 33	16,167 66	15,369 61	17,084 49	90,627 01
Passenger	4,035 23	3,085 17	4,324 12	3,291 77	3,554 17	3,461 98	21,752 44
Mail	465	465	465	465	465	465	2,790
Express	196 48	166 18	256 99	294 38	326 55	287 67	1,528 25
Telegraph	88 57	75 07	76 51	108 23	124 06	62 11	534 55
Mileage	1,510 81	28 01	13 09	317 72	250 94	304	2,424 57
	18,619 63	17,931 81	20,705 04	20,644 76	20,090 33	21,665 25	119,656 82

75 B.

Statement of operating expenses for six months ending June 30th, 1875.

Operating expenses.	January.	February.	March.	April.	May.	June.	Total.
Train service	1,128 68	1,325 48	1,420 84	1,463 92	1,146 83	1,178 81	7,664 56
Engine service	1,674 61	1,759 15	1,994 37	2,428 44	2,111 16	2,264 56	12,232 29
Station service	1,414 05	1,061 24	1,969 89	1,296 44	1,939 60	1,437 58	9,118 80
Water service	245 95	255	280	300	260	260	1,600 95
Repairs track	2,259 20	2,659 84	2,289 83	6,750 15	3,384 23	3,343 51	20,686 76
Repair bridges	55 12	79 25	183 70	252 17	314 12	155	1,039 36
Repairs buildings	175 83	283 56	299 53	188 67	326 80	174 25	1,448 64
Loss and damage		95 50	66 50	85 18	195	436 89	879 07
Fuel	1,380 20	39 10	1,528 60	2,983 75	30 50	1,157 00	7,109 15
General expenses	1,673 52	1,625 52	1,818 15	2,040 90	2,050 24	2,239 10	11,447 43
Repairs cars	949 07	1,019 19	1,073 75	860 77	812 08	1,206	5,919 86
Repairs locomotives	1,437 73	1,297 11	1,063 09	1,270 65	4,257 33	1,482 35	10,808 26
Printing, stationers, &c	341 52	155 10	97 18	70 55	22 75	50 50	737 60
Miscellaneous	406 09	523 11	246 71	496 18	1,947 70	1,099 13	4,718 92
	13,141 57	12,178 15	14,331 14	20,487 77	18,788 34	16,484 68	95,411 65

GILMAN, CLINTON AND SPRINGFIELD RAILROAD.

Statement showing movement of freight for six months ending June 30th, 1875.

	Forwarded car-loads—									Received car-loads—							
	To Chicago east.				Via P., C. & St. L. R. R.			East via S. & I. S. E. R. R.		From Chicago.			From P. C. & St. L. R. R.				
	Grain.	Cattle, hogs.	Unenumerated.	Total.	Grain.	Unenumerated.	Total.	Grain.	Total.	Lumber.	Unenumerated.	Total.	Unenumerated.		Local.	Total.	
Springfield	.....	1,650	50	.....	24	.....	.....	.....	.....	400	69	.....	60	.....	.....	.....	Competition with C. & A. S. & I. S. E. and T. W. & W. Railroads.
Barclay	.....	8	.....	.....	11	.....	.....	28	.....	1	.....	.....	.....	.....	.....	.....	
Cornland	.....	55	.....	.....	9	.....	.....	79	.....	9	.....	.....	.....	.....	.....	.....	
Mt. Pulaski	.....	78	.....	.....	14	.....	.....	76	.....	24	.....	.....	.....	.....	.....	.....	Competition with Toledo, Wabash & Western R. R.
Chesnut	.....	24	.....	.....	36	.....	.....	44	.....	2	.....	.....	.....	.....	.....	.....	
Kenney	14	28	.....	.....	39	.....	.....	35	.....	25	.....	.....	.....	.....	.....	.....	
Clinton	.....	47	.....	.....	2	.....	.....	6	.....	62	.....	.....	.....	.....	.....	.....	Competition with Ill's Central & I. B. & W. Railroads.
DeWitt	.....	46	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	
Fullerton	.....	47	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Farmer City	.....	50	.....	.....	26	.....	.....	.....	.....	14	.....	.....	.....	.....	.....	.....	Competition with Indianapolis, B. & Western R. R.
Belleflower	2	19	.....	.....	14	.....	.....	8	.....	13	.....	.....	.....	.....	.....	.....	
Gibson	.....	60	.....	.....	27	.....	.....	2	.....	50	.....	.....	.....	.....	.....	.....	Competition with Chicago and Paducah and T. W. & W. R. R's.
Melvin	57	6	.....	.....	4	.....	.....	.....	.....	15	.....	.....	.....	.....	.....	.....	
Roberts	42	4	.....	.....	1	.....	.....	.....	.....	28	.....	.....	.....	.....	.....	.....	
Thawville	38	25	.....	.....	.....	.....	.....	.....	.....	11	.....	.....	.....	.....	.....	.....	
Ridgeville	1	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Gilman	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Competition with Ill's Cent. & Toledo, Peoria & W. R. R's.
All stations	.....	.....	37	.....	.....	10	.....	.....	.....	.....	243	.....	29	.....	2,254	.....	
Total	154	2,152	87	2,393	207	10	217	278	278	655	312	967	89	89	2,254	6,198	

RECAPITULATION AND REVENUE.

	No. cars.	Actual weight.	G. C. and S. prop. freight.	Average per car.
		lbs.		
To Chicago	2,293	47,854,4	35,296.40	14.75
East via P. C. & St. L. R. R	217	4,766,701	3,004.38	13.84
" " S. & I. S. E. R. R	278	6,116,000	3,892.00	14.00
From Chicago	967	19,336,715	20,004.38	20.68
" P. C. & St. L. R. R	89	1,958,977	1,880.45	21.13
Local	2,254	45,080,000	26,549.40	11.78
Total	6,198	125,112,797	90,627.01	14.62

77 **D.**

Comparative statement by car-loads for six months ending June 30th, 1874 & '5, showing the amount of local business originating from and consigned to points on G., C. and S. R. R. and the through business received from other lines.

	1874.		1875.	
	Cars.	Revenue.	Cars.	Revenue.
Freight forwarded & received from & to points on G., C. & S. R. R.	5,693	83,825 48	4,365	64,706 57
" " " " " other lines (through)	292	4,572 72	1,833	25,920 44
	5,985	88,398 20	6,198	90,627 01
1874	.....	.....	5,985	88,398 20
Total increase 1875	.....	.....	213	2,228 81
Increase from other roads 1875	.....	.....	1,541	21,347 72
Decrease local "	.....	.....	1,328	19,118 91
Increase	.....	.....	213	2,229 81

78 **B.**

GILMAN, CLINTON & SPRINGFIELD R. R.

Statement of car loads (other than from Chicago) received from Chicago and Paducah R. R. at Gibson, from Nov., 1873, to May 31st, 1875, inclusive.

Date.		Destination.		Articles.	G., C. & S. R'y.
Dec. 18, 1873	C. & P. R. R.	Melvin.	1	Car coal.	11
Mar. 3, 1874	.....	Roberts.	1	"hh. goods.	13
Ap'l 16, "	.....	"	1	" trees.	15
Aug. 14, "	.....	"	1	" coal.	9 40
" 19, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 26, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
Sept. 3, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 7, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 15, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 17, "	.....	Ridgeville.	1	" "	9 40
" 19, "	.....	Roberts.	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 22, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 23, "	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
" 24, "	.....	"	1	" "	9 40
24, 1874	.....	"	1	" "	9 40
79 " " "	.....	"	1	" "	9 40
" 25, "	.....	"	1	" "	9 40
" 25, 1874	.....	"	1	" "	9 40
" " "	.....	"	1	" "	9 40
M'ch 2, 1875	.....	"	1	" "	9 40
" 11, "	.....	"	1	" "	9 40
" 22, "	.....	"	1	" ports.	6 00
Ap'l 8, "	.....	"	1	" sand.	8 00
May 25, "	.....	Springfield.	1	" hay.	21 50
" 29, "	.....	"	1	" "	21 50
" " "	.....	"	1	" "	21 50
May 31, "	.....	"	1	" "	21 50
Total	.....	.....	38		412 90

GILMAN, CLINTON & SPRINGFIELD R. R.

Statement of car loads (other than for Chicago) delivered to Chicago & Paducah R. R. at Gibson, from Nov., 1873, to May 31st, 1875, inclusive.

Date.	Where from.	Destination.		Articles.	G., C. & S. frt.
Feb'y 13, 1874	Barclay.	Sullivant.	1	Car coal.	16
" 26, "	"	"	1	"	16
M'ch 26, "	"	"	1	"	12 50
Ap'l 11, "	"	"	1	"	12 50
" 20, "	"	Burr Oaks.	1	" stone.	9 25
Aug. 18, "	"	Sullivant.	1	" coal.	12 50
" 19, "	Clinton.	Streator.	1	" m'c'h'y.	12 70
Sept. 28, "	Barclay.	Sullivant.	1	" coal.	12 50
Oct. 5, 1874	"	"	1	" "	12 50
80 " " "	"	"	1	" "	12 50
" " "	"	"	1	" "	12 50
" 30, 1874	"	"	1	" "	12 50
" " "	"	"	1	" "	12 50
" " "	"	"	1	" "	12 50
Nov. 3, "	"	"	1	" "	12 50
Dec. 1, "	"	"	1	" "	12 50
" 4, "	"	"	1	" "	12 50
" " "	"	"	1	" "	12 50
" 24, "	"	"	1	" "	12 50
" " "	"	"	1	" "	12 50
Total			20		253 95

F.

GILMAN, CLINTON & SPRINGFIELD R. R.

Statement of car loads from Chicago, via Chicago & Paducah R. R., from Nov., 1873, to May, 1875, inclusive.

Date.	Destination.		Articles.	Weight.	G., C. & S. prop.	C. & P. prop.	Total fr't.
May, 1874	Thawville.	1	Car loads.	20,000	11 96	17 94	29 90
April, "	Melvin.	1	" "	20,000	12 76	19 14	31 90
Feb'y, "	Belleflower.	5	" "	101,000	69 89	104 84	174 73
M'ch, "	"	4	" "	80,000	55 36	83 04	138 40
Ap'l, "	"	1	" "	20,000	13 84	20 76	34 60
June, "	"	2	" "	40,000	27 68	41 52	69 20
August "	"	9	" "	180,000	124 56	186 84	311 40
Sept. 1874	"	3	" "	60,000	41 52	62 28	103 80
Nov., "	"	11	" "	220,000	152 24	228 36	380 60
Dec., "	"	1	" "	20,000	13 84	20 76	34 60
Feb'y, 1875	"	1	" "	20,000	13 84	20 76	34 60
M'ch, "	"	2	" "	40,000	27 68	41 52	69 40
Ap'l, "	"	1	" "	20,000	13 84	20 76	34 60
May, "	"	3	" "	60,000	41 52	62 28	103 80
		50	Cars.	1,001,000	692 69	1,039 04	1,731 73
May, 1875	DeWitt.	6	Cars lumber.	120,000	93 74	129 46	223 20
Jan'y, 1874	Clinton.	10	" " & shingles.	212,250	181 25	222 46	403 70
Feb'y, "	"	11	" "	249,975	218 72	269 01	487 73
Ap'l, "	"	4	" "	84,000	74 08	90 65	164 72
June, "	"	2	" "	40,000	33 68	41 16	74 84
Sept. "	"	1	" & shingles.	20,000	16 85	20 60	37 45
Oct., "	"	1	" salt.	20,000	13 88	16 97	30 85
		29		625,225	538 45	660 84	1,199 25
Feb'y, 1875	Kenney.	1	Car lumber.	20,000	18 14	19 66	37 80
M'ch, "	"	2	" "	40,000	36 29	39 31	75 60
Ap'l, "	"	4	" "	80,000	72 58	78 62	151 20
		7		140,000	127 01	137 59	264 60
June, 1874	Springfield.	6	" "	240,000	96 00	144 00	240 00
May, 1875	"	24	" "	480,000	487 20	302 80	840 00
		30	Cars.	720,000	583 20	496 80	1,080 00

G.

RECAPITULATION.

Average fr't per car.					G., C. & S. fr't.	C. & P. fr't.	Total fr't.
11.96	Thawville	1	Car.	20,000	11 96	17 94	29 90
12.76	Melvin	1	"	20,000	12 76	19 14	31 90
13.85	Belleflower	50	"	1,001,000	692 69	1,039 04	1,731 73
15.62	DeWitt	6	"	120,000	93 74	129 46	223 20
18.56	Clinton	29	"	626,225	538 45	660 84	1,199 29
18.14	Kenney	7	"	140,000	127 01	137 59	264 60
19.44	Springfield	20	"	720,000	583 20	496 80	1,080 00
		124		2,647,125	2,050 81	2,509 81	4,560 62

Same through rates and per cents for I. C. and G., C. & S. R. R's via Gilman.

H.

Statement of cash received and disbursed for six months ending June 30th.

Received:		
Balance from Dec., 1874	60,838 34	
January, 1875	18,075 22	
February, "	21,567 31	
March, "	24,190 82	
April, "	24,564 49	
May, "	26,568 89	
June, "	12,089 07	
		187,893 34
Payments:		
January	12,091 60	
February	15,933 38	
March	15,890 64	
April	19,109 02	
May	28,844 75	
June	43,817 56	135,686 95
Balance on hand June 30th, 1875		52,206 39

83 *Statement showing balance of cash on hand at the end of each month.*

December, 1873	$1,065 30
January, 1874	$5,748 94
February, "	$8,859 09
March, "	$10,402 35
April, "	$7,029 42
May, "	$17,162 63
June, "	$16,615 26
July, "	$22,267 50
August, "	$30,578 89
September, "	$34,635 14
October, "	$48,995 56
November, "	$47,162 69
December, "	$60,838 34
January, 1875	$66,821 96
February	$72,455 89
March	$80,756 07
April	$86,211 54
May	$83,934 88
June	$52,206 39

84 I.

Statement of amounts paid by F. E. Hinckley, receiver, for other than operating expenses.

Date.	No. of voucher.	Name.	Account.	Amount.	
1873.	6	S'field Gas. L. Co	Old bill	18 33	
December.	10	Patterson and Co.	" "	11 45	
	11	Ill. Cent. R. R.	" overcharges	90 80	
	12	R. B. Zimmerman	" "	5 53	
	13	F. J. Miller	" "	37 21	
	14	H. Williams	" "	1 37	
	15	Zeazell and Campbell	" "	21	
	21	A. J. Aldrich	" "	23 28	
	24	Frasius, Jeth & Co.	" freight acc't	13 32	
	29	Little and Bro.	" bill carrying mail	26 67	
	32	J. W. I. Smith	" " fr't on material	79 59	
	36	Shuck and Baker	" overcharge	100	
	1619	M. Slick	" stock killed	20	
	1824	M. Hickox	" overcharge	9 90	
	1826	Vredenburgh & Co.	" "	10	
	1827	Shuck and Baker	" "	110	
		E. E. Southard and Bro.	" note	201 70	
		Balances due other roads transferred from co's ledger and paid in account		5,032 30	
		Balance due on Sept., 1873	Pay-roll	8,157 46	
		" " " Oct. "	" "	10,565 22	
		Pay-roll and shops	Construction for the month	185 79	
					24,721 12
1874.					
January.	44	Sam'l Yocum	Old bill, fencing	12 58	
85	55	Crane and Hurd	" overcharge	35 20	
	56	R. Carty	" "	9 50	
				57 28	24,721 12
1874.			Amount brought for'd	57 28	24,721 12
January.		E. E. Southard and Bro.	Old note	207 55	
		"	" "	219 79	
	1785	Lane and Crawford	" bill	16	
	1734				
	1793	Ill. Cent. R. R.	" overcharge	535 56	
	1794				
		Wm. Fuller	" cow killed	90	
	1804	G. W. Edwards	" bill fr't ex.	10	
		E. E. Southard & Bro.	" note and protest	202 30	
		Broadwell and Springer	" "	230	
		A. Gunnison and Co.	" "	377 82	
	1769	J. M. Craig	" overcharge	3 00	
	1717	Lefever and Ward	" "	43	
		Balance Nov., 1873	Pay-roll	11,135 93	
		Pay-roll and shops	Construction for the month	252 32	
					13,337 98
February.	75	Haughey and Weaver	Old bill	2 55	
	76	Robinson, Knapp & Shutt	" " taxes	1,216 64	
	80	L. Bearing	" "	22 50	
	82	T. W. & W. R. R.	" "	60 00	
	84	Crerar, Adams & Co.	" "	245 93	
	97	J. & J. W. Bunn & Co	" "	21	
	103	J. F. Sage	" "	35	
86	1767	John Felter	" " (on acc't)	100	
	1655	D. and J. B. Brown	" "	236 35	
	1708	"	" "	222 73	
	1704	J. Day	" " (on acc't)	25	
	1807	Crerar, Adams & Co.	" "	229 78	
		Pay-rolls	Construction for the month	53 25	
					2,471 03
					40,530 13
1874.					
March.			Amount bro't for'd		40,530 13
	107	Ill. Cent. R. R.	Old overcharges	246 91	
	108	M. T. Hall	Old overcharges	110	
	110	S. Fuller	Old overcharges	10	
	116	M. T. Hall	Old overcharges	100	

Statement of amounts paid by F. E. Hinckley, receiver—Continued.

Date.	No. of voucher.	Name.	Account.	Amount.	
1874.					
March.	119	D. and J. B. Brown	" bill	45 05	
	133	Ewing and Dana	" overcharges	108 68	
	135	E. Kent and Co	" "	92 85	
	141	H. Honschiedt	Expenses	110	
	148	Myers and Talcott	Old bills	9	
	1818	E. D. Keys	" "	12 00	
	1817	"	" "	100	
	1662	J. McIntire	" "	37 60	
	1704	J. Day	" " (on acc't)	113 40	
	1767	J. Felter	" " (balance)	70	
	1770	Wm. Smith	" "	40	
	1777	E. Cantrall	" "	13	
	1782	H. Robinson	" "	86 85	
	1784	J. Berry	" "	16	
	1787	H. Crosby	" "	5 50	
87	1798	H. Wilson & Co	" "	8 25	
	1800	A. Rowling	" "	24	
	1802	Haughey and Weaver	" "	10 55	
		Pay-rolls	Construction for the month	63 46	
					3,603 60
April.	156	J. S. Taylor	Old bill	27 30	
	167	Wm. Mayer	" "	27	
	168	M. McFarlen	" "	33 42	
	183	Ewing and Dana	" "	48 06	
				135 98	
					44,133 73
1874.			Amount bro't for'd	135 98	44,133 73
April.	196	C. B. Cooper	Old bill	10	
	207	Robinson, Knapp and Shutt	" " int. & legal ex.	108	
	208	Journal Co	" "	224 50	
	220	E. Kent & Co	" "	99 59	
	1603	Kent and Co	" "	53 15	
	1656	"	" "	250 99	
	1774	"	" "	62 44	
	178	Huson and Jones	Fencing	32 58	
	179	J. Day	"	90	
		Pay-roll	Construction for the month	34 54	
	212	H. Crawford	Legal expenses	500	
	213	"	"	500	
					2,101 77
May.	222	B. W. McCue	Old overcharge	108 90	
	223	King & Co	Old bill	23 60	
88	237	Broadwell and S	" "	200	
	251	Crerar, Adams & Co	" "	120 75	
	264	P. W. Harts	" "	2	
	1723	D. and J. B. Brown	" "	121 05	
	1803	Miller, Jacobs & Co	" "	125 34	
	1786	Glidden	" "	56 90	
	1792	R. D. Lawrence	" "	90 44	
	1791	H. Robinson	" "	21 05	
	241	Wm. Longnecker	Culverts, &c	60 34	
	249	J. Day	Fencing	9 20	
		Pay-roll	Construction for the month	36	
					975 57
					47,211 07
1874.					
June.			Amount brought for'd		47,211 07
	269	D. H. Snyder	Old overcharge	100	
	282	E. Saltz	" stock killed	46 50	
	283	J. W. Ray	" "	65	
	313	T. J. Snell	" "	87	
	322	Fox and House	" bill	24	
	351	Fuller and Graham	" "	245	
	356	S. Hayes	" taxes	40 90	
	300	H. Crawford	Legal expenses	500	
	311		Old taxes	15 10	
	310	John A. Hughes	" interest	75	
	301	Menominee R. L. Co	Fencing	84	
	326	Thornton Hull	"	180	
89	327	J. O'Brien	"	19 60	

Statement of amounts paid by F. E. Hinckley, receiver—Continued.

Date.	No. of voucher.	Name.	Account.	Amount.	
		Pay-rolls and shops	Construction for the month	73 39	
	1775	Fox and House	Old bill	24 50	
	1779	G. W. Phillips	" "	58 52	
	1780	Henson & Jones	" "	17 40	
	1805	J. W. Priest	" "	26 25	
	1811	T. J. Galbraith	" "	63 20	
		Balance on pay-rolls from Mc'h to Aug., 1873		1,173 28	
					2,918 64
July.	360	Wm. Fuller	Legal expenses	16 35	
	405	M. M. Buck	Old bill	62 38	
	413	R. Robinson	" "	200	
	1803	L. D. Dana	" overcharge	14 25	
	1704	J. Day	" (balance)	88 40	
	1773	M. Kent	" bill	23	
	1680	"	" "	48 68	
				453 06	50,129 71
1874.					
July.			Amount brought for'd	453 06	50,129 71
	1833	B. McCue	Old bill	68	
	1797	State Register	" "	46	
	1649	Fox and House	" "	69 35	
	1557	Mears, Bates & Co	" "	76 14	
	1660	H. P. Merriman	" "	27 67	
	1805	"	" "	85 83	
	1778	Hanratty and Co	" "	25 25	
	1821	Vredenburgh & Co	" "	13 30	
	1813	B. H. Skeels	" "	10 64	
90	1659	Crerar, Adams & Co	" "	27 93	
	367	Ford River L. Co	Fencing	500	
	386	P. Kilnimy	"	23 40	
	387	T. Handley	"	23 55	
	388	S. Jones & Co	"	88 80	
	389	T. J. Hall	"	90	
	390	T. Johns	Side track	11 25	
	391	J. McIntire	"	12	
	392	W. H. Davis	Fencing	8 40	
	393	S. L. Beidler	"	99 00	
	394	H. Bobell	"	17 70	
	396	H. Lethine	Grading	7 50	
	397	J. W. Bettinger	Construction	9	
		Pay-roll and shops	Construction for the month	115 03	
					1,983 80
August.	1790	Vredenburgh & Co	Old bills	1 35	
	1825	Yeazell and Campbell	" "	40	
	1796	G. C. Sutton	" "	10 50	
				51 85	52,113 51
1874.					
August.			Am't bro't for'd	51 85	52,113 51
		A. Gunnison	Old note	254 36	
	1806	"	" bill	140 37	
	430	Ford River Lumber Co	Fencing	660	
	449	J. H. Shuckhart	"	223 20	
	457	J. McIntire	Grading	3	
	458	E. Henson	Fencing	60 90	
91	459	J. T. Hall	"	56 05	
	460	W. Holmes	"	12 06	
	461	J. L. O'Brien	"	28 05	
	462	S. Fuller	"	55 80	
	463	R. Austot	"	66 21	
	464	C. Jones	"	40 80	
		Pay-rolls	Construction for the month	152 78	
					1,805 43
September.	479	A. J. Aldrich	Old bill	30	
	481	J. Shimer	"	52	
	485	Ford River Lumber Co	Fencing	1,000	
	487	J. H. Shuckhart	"	438 10	
	507	C. Jone	"	25 12	
	508	E. Henson	"	35 36	
	499		Legal ex	20 10	

Statement of amounts paid by F. E. Hinckley, receiver—Continued.

Date.	No. of voucher.	Name.	Account.	Amount.	
		Pay-roll & shops	Construction for the month	217 96	
					1,818 64
October.	522	John Rider	Old horse killed	70	
	532	A. J. Aldrich	" overcharge	36	
	541	Nutt and Barclay	" bill	9 50	
	535	Kimbark Bros. & Co	Fencing	32	
	396	J. H. Shuckhart	"	2 90	
				150 40	55,737 58
1874.					
Oct.	558	J. Monroe	Am't bro't for'd	150 40	55,737 58
	559	C. Jones	Fencing	25 29	
	560	J. L. O'Brien	"	70 88	
92	561	E. Heuson	"	46 40	
		Pay-rolls	Construction for the month	124 80	
	1336	T. J. Gilbraith	Old bill	54 74	
	1e01	"	"	24 40	
				19 95	
					516 86
November.	579	Luddington & W	Old overcharge	58 50	
	597	R. P. Lynn	" stock killed	37 50	
	598	John Buckles	" "	72	
	1647	J. Nash & Co	Old bill	472	
	1470	"	" "	334 35	
		C. C. Buckles	" note (balance)	275	
		J. Buckles	" note (")	475	
	594	Kent and Kirker	Section house	65 40	
	623	Jas. Wilkite	"	20	
	624	C. Jones	Fencing	29 25	
	625	P. Sutton	"	3 75	
	626	E. Heuson	"	30 30	
	627	S. Fuller	"	38 16	
	628	Harwood and M	"	3 15	
	632	R. D. Lawrence	"	536 25	
		Pay-rolls	Construction	67 75	
					2,518 36
December.	649	Lefever and Ward	Old overcharge	72	
	657	J. Wilter	" stock killed	50	
	655	J. B. Richardson	" "	150	
				272	58,772 80
93 1874.					
December.			Am't bro't for'd	272	58,772 80
	665	Wm. Pearson	Int. on mortgage	75	
	653	E. C. Hamburger	Legal expenses	10	
	654		"	6 95	
	693	J. L. & J. T. Spaulding	"	92	
	694	McNulta and Aldrich	"	30	
	695	Jameson and Morse	"	14	
	675	Kent and Kirker	Fencing	51 40	
	677	Kimbark Bros. and Co	"	15 50	
	678	Hale, Ayer and Co	"	23 25	
	679	R. D. Lawrence	"	151 87	
	680	Ferry and Bro	"	38 90	
	681	John McCord	"	18 27	
	682	Thomas Hoy	"	9	
		Pay-rolls	Construction for the month	69 06	
					877 20
1875.					
January.	848½	S. Yocum	Old bill	64 10	
	815	J. A. Winston	Legal expenses	11 25	
	816	Hawley and Grant	Insurance	52 50	
	827	J. Riddle	Fencing	20 50	
	828	J. McCord	"	4 80	
	857	R. D. Lawrence	"	60 06	
		Pay-roll	Construction for the month	75	
					288 21
February.		S. P. Townsend	Right of way	75	
		E. Vaustenburg	Fencing	105 32	

Statement of amounts paid by F. E. Hinckley, receiver—Continued.

Date.	No. of voucher.	Name.	Account.	Amount.	
	883	Shuck and Baker	Cattle pens	17	
94	884	Pay-rolls	Construction for month	3 15	
	890	Walden and Gapen	Legal expenses	500	
	887				700 47
					60,638 68
1875.					
March.			Am't bro't for'd		60,638 68
	922	A. H. Margins	Old bill	103 40	
	969½	H. Crawford	Legal expenses	500	
	919	Jameson and Morse	"	48 75	
	951½	J. R. Doolittle and Son	"	100	
	920	Fairbank, Morse and Co	Construction scales	337 50	
		Pay-roll	Construction for the month	7 50	
					1,097 15
April.	1001	C. C. Buckles	Old bill	150	
	1002	J. A. Winston	Legal expenses	10 90	
	1003	E. H. Palmer	"	100	
	1029½	H. Crawford	"	500	
	1012	C. E. Kibbe	Construction	62 40	
	1014	Shuck and Baker	"	24 75	
	1795	H. W. Dorr	Old bill	140	
		Pay-roll	Construction for the month	16	
					1,004 05
May.	1031	T. J. Hudson	Baggage room	175	
	1067	C. & P. R. R.	Y at Gibson	339 01	
	1 99	W. B. Miller	Construction	3 75	
	1658	Mears & Lilley	Old bill	94 53	
		Pay-roll	Construction for the month	24	
					636 29
June.	1124	Stewart, Edwards & B	Old bill	750	
95	1128	H. Welsch	"	560 55	
	1129	J. P. Mitchell	"	339 90	
	1130	C. Deland	"	1,450 71	
	1131	H. Helmick	"	166 20	
	1135	C. H. Frew	"	275	
				3,542 36	63,376 17
1875.					
June.			Am't bro't for'd	3,542 36	63,376 17
	1132	McNulta and Aldrich	Legal expenses	25	
	1133	Welden and Gapen	"	350	
	1134	E. M. Prince	"	1,200	
	1139	T. A. Lewis	Taxes	16 17	
	1140	Joseph Dennison	"	1,303 80	
	1163	H. Crawford	Legal expenses	500	
	1164	"	"	500	
	1166	E. R. Perkins	Taxes	1,605 01	
	1167	Joseph Ream	"	1,363 74	
	1170	Jameson and Morse	Legal expenses	12 50	
	1173	J. B. Shaw	Taxes	2,996 90	
	1174	Wm. Pearson	Mortgage	1,555	
	1175	Geo. T. Metzger	Taxes	733 62	
	1176	Wm. Gambrell	"	5,130 74	
					20,534 84
					$83,911 01

Filed July 23rd, 1875.

S. F. DOLLOFF, *Clerk.*

96 *Receiver's report.*

In the circuit court of the United States for the southern district of Illinois. In chancery.

JOSEPH J. KELLEY ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD R. R. Co. et al.

To the honorable judges of said circuit court:

By an order of the McLean County circuit court the undersigned, receiver of the said Gilman, Clinton and Springfield R. R. Company, did, on the 28th day of August, A. D. 1875, deliver possession of said railroad and all its appurtenances to Thomas A. Scott and Hugh J. Jewett, trustees. At that date, as per my books, now in possession of C. S. Seyton, agent of said trustees, there was due said railroad company the sum of $16,572.97.

I have since that time, by order of said McLean circuit court, paid to—

W. J. Devine, for services	$200
A. J. Joslin	250
A. Pickard	188 25
Sam'l C. Smith	206 67
Barclay Coal & Mining Co	2,928 27

Leaving a balance in my hands of $12,799.78.

97 I would respectfully state to this honorable court that there are in my hands vouchers in favor of sundry persons for materials and supplies purchased by me, and also accrued balances due other roads, incurred during my administration, now unpaid; that the parties to whom this indebtedness is due are asking me for payment. I would respectfully ask this hon. court to authorize me to settle and pay such of said indebtedness as I know to be correct.

I would further most respectfully state to this hon. court that I am liable individually on a bond on appeal for the taxes due from said railroad company to the several counties through which it runs, on appeal from the Sangamon circuit court to the supreme court of the State of Illinois, and ask at the hands of this court such order be entered as will release myself and Henry Crawford, esq., from personal liability on account of said bond.

I would further respectfully state to this hon. court that an order under date of March 1st, 1876, in the case of Morton, Bliss & Co. vs. The Gilman, Clinton & Springfield R. R. Company, was duly
98 served, ordering me to file a final account on or before the 10th day of March. I was informed that on motion of L. Weldon, esq., an order had been entered extending the time for the filing of my report until the first week in April; further, that this fact was published in all of the papers of the city of Chicago, where I reside. Relying upon the correctness of this statement, I omitted to make report as ordered, without either in act or thought intending to commit or of being in contempt of this honorable court.

Respectfully submitted.

F. E. HINCKLEY.

CHICAGO, *March* 22, 1876.

(Indorsed:) Filed March 23d, A. D. 1876. J. A. Jones, clerk.

99 And afterwards, to wit, on Tuesday, the 23rd day of May, in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order on Hinckley to pay over bal. of money.

LEVI P. MORTON ET AL.
vs.
GILMAN, CLINTON AND SPRINGFIELD RAILroad Company. } In chancery.

And now, on this day, May 23d, 1876, the application for an attachment against Francis E. Hinckley, late receiver, for not obeying the order of this court to pay into court the admitted balance in his hands, coming on to be heard, also the petition of said receiver for a modification of said order coming on to be heard, and the court having heard counsel on both sides and being fully advised, orders that the said petition for a modification of said order be denied; and it is ordered that the said receiver, Francis E. Hinckley, pay to the clerk of this court on or before the 30th day of May inst. the sum of twelve thousand
100 seven hundred and ninety-nine dollars and seventy-eight cents ($12,799.78), balance admitted to be in his hands, and that in default of such payment an attachment at once issue against him for contempt of this court.

It is further ordered that when said money is paid in it be held subject to the further order of this court for the proper protection of the said receiver against any proper liability he may have incurred while in charge of said property on account of said property.

It is further ordered that said Hinckley, at the time of paying over said funds, file with the clerk of this court a list of such claims as he admits are a proper charge against said fund.

And afterwards, to wit, on the 25th day of May, in the year last aforesaid, came said complainants, by their said attorneys, and filed in said clerk's office their notice to F. E. Hinckley and affidavit, which said notice is in the words and figures as follows, to wit:

101 *Notice and affidavit.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court of the United States for the southern district of Illinois. In chancery.

MORTON, BLISS & CO. ET AL.
vs.
THE GILMAN, CLINTON AND SPRINGFIELD Railroad Company.

To Francis E. Hinckley:

You are hereby notified that on Saturday, the 20th inst., at nine o'clock a. m. of said day, or as soon thereafter as counsel can be heard, I shall move the court, his honor Judge Treat presiding, in the room usually occupied by him, at Springfield, Illinois, for an order that you show cause why y ou should not be attached for contempt of court in having

disobeyed the order thereof requiring you to pay certain moneys into court.

R. E. WILLIAMS,
Sol'r for Morton, Bliss & Co.

SPRINGFIELD, *May 17th*, 1876.

STATE OF ILLINOIS,
County of Cook, ss :

102 Samuel M. Booth, being duly sworn, deposes and says that he served the within notice on the within-named Francis E. Hinckley by delivering a copy thereof to a clerk in the office of said Hinckley, and that this affiant saw the said clerk immediately thereupon deliver the said copy to the said Francis E. Hinckley this 18th day of May, 1876.

SAMUEL M. BOOTH.

Subscribed and sworn to before me this 18th day of May, A. D. 1876.
[L. S.] WILLIAM S. MILLIGAN,
Notary Public.

(Endorsed:) Filed May 25, 1876. J. A. Jones, clerk.

103 *Notice of compl'ts to receiver.*

Circuit court of the United States for the southern district of Illinois.
In chancery.

MORTON, BLISS & CO. ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD RAILROAD COMPANY.

Messrs. CRAWFORD AND MCCONNELL,
Attorneys at Law:

GENTLEMEN: You will take notice that Ezra M. Prince, esq., special master in said cause to state an account against Francis E. Hinckley, late receiver, will file in the above court his report, and that on Monday, the 10th day of July instant, at ten o'clock a. m., or as soon thereafter as we can be heard, we will present to said court and argue certain exceptions by us to said report; and if said exceptions are overruled, will move said court to approve said report, and for an order on said Hinckley to forthwith pay over the amount found due from him by said report. At which time and place you can appear and oppose said motions if you desire so to do.

WILLIAMS, BURR AND CAPEN,
Sol'rs Morton, Bliss & Co.

JULY 8TH, 1876.

104 STATE OF ILLINOIS,
County of Cook, ss:

Samuel M. Booth, being duly sworn, deposes and says that he served the within notice by delivering a copy thereof to Sam'l P. McConnell, one of the attorneys of Francis E. Hinckley, within named, on the 8th day of July, A. D. 1876, between the hours of ten and eleven a. m.

SAMUEL M. BOOTH.

Subscribed & sworn to before me this 8th day of July, 1876.
[L. S.] WILLIAM S. MILLIGAN,
Notary Public.

(Endorsed:) Filed July 11th, 1876. J. A. Jones, clerk.

105 And afterwards, to wit, on the said 11th day of July, in the year last aforesaid, at the June term of said court, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order allowing trustees' expenses.

LEVI P. MORTON ET AL.
vs.
GILMAN, CLINTON & SPRINGFIELD RAILROAD Company. } In chancery.

And now, to wit, July 11th, 1876, it appearing to the court that Col. Thomas A. Scott and Hugh J. Jewett, esq., the trustees named in the above-entitled cause, and also their agent, C. S. Seyton, esq., do not make any claim for compensation for services under the deed of trust upon the fund in court, it is hereby ordered, adjudged, and decreed that they be allowed out of said fund for counsel fees, traveling and incidental expenses already incurred, the sum of seven thousand dollars ($7,000.00).

106 And afterwards, to wit, on the said 11th day of July, in the year last aforesaid, at the June term of said court, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order on Fidelity Savings Bank to surrender bonds.

LEVI P. MORTON ET AL.
v.
GILMAN, CLINTON & SPRINGFIELD RAILROAD Company. } In chancery.

And now, to wit, July 11th, 1876, final decree having this day been entered in this cause, and the clerk of this court being required to cancel the bonds in court, the Fidelity Savings Bank and Safe Depository is hereby required to deliver to the said clerk, John A. Jones, esq., or his authorized deputy, the three hundred (300) bonds now in the possession of said company and retained under an injunction issued by this court February 15th, 1876.

And afterwards, to wit, on the 12th day of July, in the year last aforesaid, came the special master herein and filed in said court his report on exceptions to receiver's report, which said report is in the words & figures following, to wit:

107 *Report of special master on exceptions to receiver's report.*

United States circuit court, southern district of Illinois.

MORTON, BLISS & CO.
vs.
GILMAN, CLINTON AND SPRINGFIELD RAILroad Co.

To the Hon. Samuel H. Treat, judge of the United States circuit court in & for the southern district of Illinois:

The undersigned special master, to whom was referred the exceptions to the report of the late receiver, Francis E. Hinckley, respectfully report that he has taken as evidence herein the depositions herewith submitted of T. J. Hudson, E. T. Jeffrey, T. J. Nicholl, R. P. Morgan, jr., on behalf of exceptants, & of Amos L. Hopkins, Judson Anderson, H. S. Morse, & Francis E. Hinckley, on behalf of said receiver; that by consent of said parties said depositions were taken by a short-hand reporter; that each of said witnesses were first duly sworn by me; that at said hearing the exceptants were present by R. E. Williams, their solicitor, & said Hinckley in person, & by S. P. McConnell, his so-
108 licitor; that on said hearing it was agreed that all the papers, record, and evidence in the case of Joseph J. Kelly et al. vs. Gilman, Clinton & Springfield Railroad Co. et al., No. 2750, McLean circuit court, and also all the papers, evidence of record in this cause, should be deemed in evidence before the master herein. At said hearing exceptants abandoned all exceptions, except those filed October 2d, 1875, and all of them filed at that time except those to receiver's compensation, $23,916.25; salary of clerk, M. S. Ettinger, $1,600.00; attorney's fees of H. Crawford, vouchers No. 212, 213, 300, 969¼, 1163, 1029¼, 1164, 1295, 1180; J. R. Doolittle & Son, voucher 957½; E. H. Palmer, voucher 1003, & Samuel C. Smith, vouchers 1180, 1168 & 1169.

The evidence before the master was confined to the items of the receiver's compensation and salary of M. L. Ettinger, $1,600, having quite a number of items disputed by exceptants' solicitor on his argument, but about which there was no proof before the master. The vouchers for none of the items were produced before the master, all the vouchers & books having been examined by four auditors, two selected
109 by the receiver and two by these exceptants, soon after the receiver's removal, and these accounts found right so far as those vouchers showed. It not being questioned before the master but what the money had been paid out as showed by the respective vouchers, the exceptants claiming that the money had been improperly paid out, and that the burden of proof was upon the receiver to show that they had been properly paid out; and the master has arrived at the following conclusions: That the receiver is an officer of the court; that his appointment operates as an equitable execution on the sequestered property of the co., and that his reports are in the nature of a sheriff's return; & that where the receiver produces vouchers for services, the employment and payment of which is within the scope of the receiver's authority, the payment will be presumed to have been rightfully made. By the order of the court appointing a receiver, he was authorized to employ attorneys, clerks, and generally to operate a railroad; and the receiver having produced the vouchers, unless the vouchers them-
110 selves show that the money was improperly paid, the master must presume that the charges were proper until the exceptants by proof rebut this presumption. Voucher No. 1164, $500.00, for legal ser-

vices of H. Crawford in defending action to foreclose mortgage upon the corporate property of the railroad for principal and interest of the $2,000,000.00 bonds of the company, shows on its face to have been improperly paid. The receiver holds the sequestered property for the benefit of all parties interested in it, and by the order of the McLean circuit court in this cause he held it expressly for the benefit of complainants in this cause as well as for the parties in the Kelly case, in which he was originally appointed; and, as a matter of fact, the bondholders had almost the sole interest in the road, which did not sell for enough to pay their lien on it; and the master has, therefore, come to the conclusion that the receiver had no authority to interfere in that suit, and especially had no authority to employ an attorney of a party acting adversely to the complainants in this cause; but there is nothing to show that the other services of solicitors and attorneys, to the payment of which exceptants excepts, were rendered otherwise to advance
111 the *to advance the* common interests of all parties to this cause were fully authorized, and, therefore, not improperly paid out.

The receiver testifies that he deposited the receipts of the road in the Ridgly National Bank, but that he drew out the excess over and above what was required to pay current expenses, & kept it in his private account in Chicago. When asked if he did not use said money so withdrawn from his (receiver's) account and deposited in Chicago to his private account, he declined to answer, and under this state of facts the exceptants claim that the receiver shall be charged with interest on his balances, to be deducted from his compensation. The present proceeding the master deems the equivalent to the "passing" of the receiver's account by the master, at which time, if the receiver has made any profit out of the trust funds, he should be charged with it by the master.

If the receiver deposited the money received in the execution of the trusts in bank, it was his duty to have deposited to a special account as receiver, and kept it separate from his own funds; having with-
112 drawn the most of it, and mixed it with his own funds, he should be charged interest in his monthly balances less five thousand dollars, which leaves to the master all that was required to meet the current expenses of the road.

The only evidence in regard to the services of W. S. Ettinger before the master was that of Mr. Hudson, who testified that he was not aware that any such man "worked on the line, but I understand there was a man of that name in Mr. Hinckley's office in Chicago, who, I think, did some work in the way of copying accounts," &c. As Mr. Hudson was at Springfield and the services were performed at Chicago, and he does not pretend to have any knowledge on the subject, only understands that Mr. Ettinger did do some labor for Mr. Hinckley, and does not pretend to know anything about their amount or value, the master allows that item.

The master, therefore, overrules all exceptions to the reports of the receiver except that to voucher No. 1164 of the receiver for commission.

The master allows the receiver ten thousand dollars for his
113 compensation as receiver, out of which should be deducted interest, four thousand three hundred sixty dollars ($4,360.00).

He charges the receiver—

With voucher No. 1164	$500 00
With interest on monthly balance	4,360 00
With amount retained by receiver	23,916 25
As commissions	$28,776 25
And credits him with ten thousand dollars compensation	$10,000 00
Leaving a balance due from receiver of	$18,776 25

All of which is respectfully submitted.
July 7th, 1876.

EZRA M. PRINCE,
Special Master.

Expense, fare two trips to Chicago	$16 20
Hotel fare	20 00
Services	$200 00
Total master's fees	$236 20

The above named Francis E. Hinckley having excepted to the above report, because it stated that said Francis E. Hinckley was called as a witness on behalf of said Hinckley, said report is amended by inserting the name Francis E. Hinckley, afterwards "Richard P. Morgan, jr.," in the tenth line from bottom of the first page, & by striking out the
114 words "Francis E. Hinckley" in the seventh and eighth lines from the bottom of the first page of said report.

EZRA M. PRINCE,
Special Master.

(Endorsed:) Filed July 12th, A. D. 1876. J. A. Jones, clerk.

Exceptions of Hinckley to master's report before master.

Circuit court of the U. S, northern district of Illinois.

MORTON, BLISS & CO.
vs.
GILMAN, CLINTON & SPRINGFIELD R. R. CO.

Francis E. Hinckley respectfully excepts to the draft of the report submitted by the special master for the following grounds:

He excepts to the statement that Francis E. Hinckley was offered as a witness on behalf of said receiver, when in truth and fact he was offered as a witness by the said Morton, Bliss & Co.

2. He excepts to that part of the report respecting voucher
115 No. 1164 for $500, because the said voucher ought to have been allowed. The said receiver had full authority to stipulate for such service, and in truth and fact the said court wherein such action was then proceeding recognized such service, and, on such defence made, ruled that the principal of such bond was not due, and that a very large and valuable portion of rolling stock was not embraced in said mortgage. And, further, that the payment of such sum for service was expressly authorized by a decree of the said McLean circuit court in the case of Kelly, of date Oct. 6, 1874.

3. He further excepts to the item of report charging him with $4,360 interest and monthly balances, and for cause assigns that—

(1.) The said matter was not referred to the master, and is not embraced in the order of reference, and he has no right to report in what is not referred to him.

(2.) That the exceptions to the report filed October 2, 1875, do not embrace any charge of interest against the receiver, and the report shows that in the hearing "exceptants abandoned all excepting except those filed Oct. 2, 1875." And, therefore, the master has no power to hear evidence upon or make a report in matter not referred to
116 and not embraced in any exception.

(3.) Because there is no evidence to support the finding that the receiver has made any profit or interest out of the trust fund; the proper refusal of the receiver under advice of counsel to refuse to answer an improper question cannot, under any rules of evidence, be held to be affirmative evidence upon which to base a report.

(4.) The master wholly erred in considering the examination of Hinckley in such matter as any basis of a report. His evidence was objected to at the time by his counsel. The exceptants introduced Hudson, Jeffrey, Nicholl & Morgan and then rested their case.

The receiver introduced clerks Anderson and Hopkins.

After this exceptants had no right to offer new matter of any kind especially not embraced in the exceptions, and then close the case by a sharp practice and claim the master must report on new matter thus brought out.

(6.) He excepts to so much of the report as only allows him $10,000 for his salary & services as contrary to evidence in the cause be-
117 fore the master and as wholly unsupported by any evidence whatever, and contrary to the recognized practice and allowance of the court in similar cases, and to the recognition of the McLean circuit court and the parties in the cause.

5. He excepts to the report because it does not find as matter of law that the receiver is an officer of the McLean circuit court undischarged; and further because the said report does not show and find that the said bondholders and mortgages have no right to the earnings of said road at the time when said funds were received by such receiver.

Respectfully submitted.

J. R. McCONNELL,
For said Hinckley.

The above exceptions to the special master were presented to the master on the 10th day of July, 1876, and all of said exceptions are disallowed & overruled except the first exception, which is sustained, the said Francis E. Hinckley having been called as a witness by complainants on said hearing before said master. To the overruling of the other exceptions said Hinckley excepts.

EZRA M PRINCE,
Special Master.

(Endorsed:) Filed July 12th, 1876. J. A. Jones, clerk.

118 *Exceptions to report of special master by complainants.*

United States circuit court, southern district of Illinois.

MORTON, BLISS & CO.
vs.
GILMAN, CLINTON & SPRINGFIELD RAILROAD Company.

Exceptions to report of E. M. Prince, special master, before the master

Complainants except to the following portions of said report:

To so much of said report as allows payments to Henry Crawford for

attorney's fees except one, and insists that all of said payments to Crawford should be disallowed. They further except to said report because it does not disallow payments to Samuel C. Smith and M. S. Ettinger, and further excepts to so much of said report as allows Francis E. Hinckley, receiver, ten thousand as compensation for his services, as said sum is excessive.

All of which is respectfully submitted.

July 11th, 1876.

WILLIAMS, BURR & CAPEN,
Solicitors for M., B. & Co.

(Indorsed:) Filed July 12, A. D. 1876. J. A. Jones, clerk.

119 *Further exceptions of complainants to report of special master.*

United States circuit court, southern district of Illinois.

MORTON, BLISS & CO.
vs.
GILMAN, CLINTON AND SPRINGFIELD RAILroad Company.

And the complainants still adhere to the said exceptions, and insists that they should be allowed, and prays that they be allowed by the court, and presents the same exceptions to the court as before the master, and insists that none of the exceptions presented by said Hinckley should be allowed.

All of which is respectfully submitted.

July 11th, 1876.

WILLIAMS, BURR & CAPEN,
Sol's for M., B. & Co.

(Indorsed:) Filed July 12th, 1876. J. A. Jones, clerk.

120 *F. E. Hinckley's exceptions to special master's report.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the United States circuit court for the southern district of Illinois.

MORTON, BLISS & CO.
vs.
THE GILMAN, CLINTON AND SPRINGFIELD R. R. Co.

Objections taken by Francis E. Hinckley to the report of the special master in chancery, to whom this cause stands referred to take proofs.

First. The said Hinckley respectfully excepts to the order of reference to the said special master by this honorable court, and to the entire report of said master, for that this court had no jurisdiction over said Hinckley nor of his accounts, said Hinckley never having been the receiver of this court in this cause, nor subject to its order as such, but is still subject to the order and control of the circuit court of McLean County, Illinois, as the quondam receiver of said Gilman, Clinton & Springfield R. R., under its order in the case of Kelly vs. said R. R. Co., then pending.

Second. And for the further reason that said Hinckley never
121 made any report nor filed any bond as receiver in this cause; the receiver's accounts now on file in this case being properly a part of the records in the case of Kelly v. Gilman, Clinton & Springfield R. R. Co., and having no connection with this cause, and for that reason should be stricken from the files of this court.

Third. And he objects to the order of reference by this court to said special master as being ex parte and made without notice to him, and he respectfully asks that the said order be recalled, and he be left to settle his accounts with the court which appointed him receiver, and subject to whose power and control he still is.

Fourth. He objects to said order and said report, for that the bondholders of the said railroad company have no right to except to his accounts as receiver, because they are not entitled to the earnings of the road until they have made a demand for its possession, and he had received the monies and made the disbursements accounted for in the account to which they except a long time prior to their demand for the possession of the road.

122 Fifth. He excepts to the statement in said report that he was offered as a witness on behalf of the receiver, when in truth and fact he was offered as a witness by said Morton, Bliss & Co., and in their behalf.

Sixth. He excepts to the disallowance of voucher No. 1164, for $500, and insists that it ought to have been allowed, so having a perfect right and full authority to stipulate for such service; and, in fact, the court, when in such action was then pending, recognized the value of such service, and in the defence thus made, ruled that the principal sum of such bond was not then due, and a very large and valuable portion of the rolling stock was not embraced in said mortgage; and he further says that the payment of such claim for service was expressly authorized by a decree of the circuit court of McLean County, dated October 6th, 1874, in the case of Kelly vs. The Gilman, Clinton and Springfield R. R. Co.

Seventh. He excepts to said report for that it charges him with $4,300 interest on monthly balances, and says that said matter of interest was
123 not referred to said master, and is not embraced in the order of reference, and the master is not authorized on that which is not referred to him; and, further, he says that the exceptions to the report filed October 2d, 1875, do not embrace any charge of interest against him as receiver, and that report discloses that on the hearing, "exceptants abandoned all exceptions except those filed Oct. 2d, 1875," and by reason of such abandonment the master has no power to hear evidence or make a report upon a matter not referred to him nor embraced in said exceptions filed October 2d, 1875. His exceptions to said charge is further sustained by the fact that the finding of the master that he, as receiver, had made any profit or derived any advantage out of the trust fund committed to his charge, is based upon his refusal, while on the stand as a witness (which refusal was sanctioned and directed by his counsel there present), to answer a question asking him whether he had made any profit out of such trust funds, and upon such refusal only, and he submitted that it is contrary to all established rules of evidence to presume from his silence that he had converted said trust funds
124 to his private use, and that he had derived a profit and an advantage therefrom. And he further says that the master erred and acted without authority in considering his examination in said matter as the basis for any report on this point, for said examination was

conducted in violation of the rules of such proceedings and under the objections of his counsel, made at the time; the said exceptants having, before his introduction as a witness, closed their testimony, and lost their right to introduce evidence to prove any new matter whatever, and especially matter entirely new and not embraced in the exceptions.

Eighth. He further excepts to said report for that it only allows him $10,000 for his salary and services, which is contrary to the evidence introduced before the master, and is contrary to the practice and recognized allowance of the courts in similar cases, and contrary to the recognition of the McLean County circuit court, and of the parties in the cause.

Respectfully submitted.

S. P. McCONNELL,
Sol'r for said Hinckley.

(Endorsed:) Filed Aug't 11th, A. D. 1876. J. A. Jones, cl'k.

125 And afterwards, to wit, on the 12th day of August, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record to wit:

Order setting exceptions for hearing.

LEVI P. MORTON ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD RAILROAD COMPANY ET AL. } In chancery.

It is ordered by the court that the exceptions to the master's report on the account of F. E. Hinckley, receiver, be set for hearing on the 5th day of Sept., 1876.

And, afterwards, to wit, on the 7th day of September, in the year last aforesaid, came said complainants by their said solicitors, and filed in the office of the clerk of the said circuit court, the following notice, which said notice, together with the return of the marshal thereon, is in the words & figures as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

United States circuit court for the southern district of Illinois.
126 Special September term, A. D. 1876.

MORTON, BLISS & CO. ET AL.
vs.
GILMAN, CLINTON & SPRINGFIELD RAILROAD COMPANY.

S. P. McCONNELL, Esq.:

SIR: You will take notice that on Friday morning at 9 o'clock a. m. of the 8th day of September, 1876, before the honorable Samuel H. Treat, holding the said court at the United States court room in Springfield, Illinois, the exceptions to the report of Ezra M. Prince, esq., special master, to whom was submitted the accounts of Francis E. Hinckley, esq.,

late receiver of said Gilman, Clinton & Springfield R. R., will be heard, at which time and place you can appear and be heard if you desire.

WILLIAMS, BURR & CAPEN,
Solicitors for Comp't.

I have served the within writ personally upon the within named S. P. McConnell, esq., by delivering him a true copy thereof, this 6th day of September, A. D. 1876.

127

B. H. CAMPBELL,
U. S. Marshal.
I. N. BUCK,
Dep'ty.

Service, 2.00.

Received payment of two dollars.
Sept. 6, '76.

B. H. CAMPBELL,
U. S. Marshal,
By AUG'T C. CAMPBELL,
Deputy.

(Endorsed:) Filed Sept. 7th, A. D. 1876. J. A. Jones, clerk.

And afterwards, to wit, on the 25th day of September, at the September special term of said court, the following further proceedings were had in said court in said entitled cause and entered of record, to wit:

Order overruling exceptions & decree against receiver.

LEVI P. MORTON ET AL.
v.
GILMAN, CLINTON & SPRINGFIELD RAILROAD COMPANY. } In chancery.

And now, on this 8th day of September, 1876, come the complainants, by R. E. Williams, esq., their counsel, and Francis E. Hinckley,
128 the late receiver of the Gilman, Clinton & Springfield Railroad Company, by S. P. McConnell, esq., his counsel, and submit to the court their respective exception to the report of E. M. Prince, esq., the special master in this cause, and the court having heard the arguments of counsel thereon, and being sufficiently advised in the premises, doth order and decree that all of said exceptions be overruled; and the court doth further order and decree that the report of the said special master be in all respects approved; and the court doth further order & decree that the said Francis E. Hinckley pay to the clerk of this court, on or before the 20th day of October next, the sum of eighteen thousand and seven hundred and seventy-six dollars and twenty-five cents ($18,776.25), the amount found due from him by the said special master in discharge of his responsibility as receiver of the Gilman, Clinton and Springfield Railroad Company.

And the court doth further order and decree that the charges
129 made by the special master, amounting to the sum of two hundred and thirty-six dollars and twenty cents ($236.20), be allowed

and taxed as part of the costs in this cause, and that said Francis E. Hinckley pay one-half of the same.

And afterwards, to wit, on the 9th day of October, in the year last aforesaid, before the judge, at chambers, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order allowing appeal.

LEVI P. MORTON ET AL.
vs.
GILMAN, CLINTON & SPRINGFIELD RAILROAD COMPANY. } In chancery.

And now on this 9th day of October, 1876, comes Francis E. Hinckley, late receiver of the Gilman, Clinton and Springfield Railroad Company, and prays an appeal to the Supreme Court of the United States from the decree entered against him in this cause on the 25th day of September, 1876; which prayer for an appeal is allowed by the
130 court on his entering into bond in the penalty of fifty thousand dollars, which, with sureties to be approved by the court and conditioned as the law directs; and thereupon the said Francis E. Hinckley presents his bond, which is approved by the court and ordered to be filed and made part of the record; and is therefore ordered by the court that the clerk forthwith certify a full copy of the record in this cause into the Supreme Court of the United States.

131 And afterwards, to wit, on the 9th day of October, in the year last aforesaid, came said receiver, by his said solicitors, and filed in said court his bill of exceptions in said cause, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

United States circuit court, southern district of Illinois.

LEVI P. MORTON ET AL.
vs.
THE GILMAN, CLINTON AND SPRINGFIELD RAILROAD COMPANY.

In the matter of the exceptions of Francis E. Hinckley to the report of the special master, Ezra M. Prince.

Be it remembered, that on the hearing of the exceptions filed by Francis E. Hinckley to the report of the special master Ezra M. Prince, the following depositions taken before the said master were introduced and read:

132 JUNE 20, 1876.

Counsel for Mr. Hinckley stated that in entering upon this examination said Hinckley does not waive any right at any time to question the jurisdiction of the United States court as to an examination of this matter under any sort of a reference, and that he does not waive

the point as to whether he is liable at any time to be called to an account by the complainants in the Morton & Bliss case in which these exceptions have been taken, and still claims if he pleases that he is subject only to the jurisdiction of the McLean County circuit court and liable to answer in no other proceeding than in the case of Kelly against the Gilman, Clinton and Springfield Railroad Company, pending in the circuit court of McLean County.

Mr. Williams, counsel for Morton, Bliss & Co. and other bondholders, objects to the above statement.

Testimony of Amos L. Hopkins.

AMOS L. HOPKINS, a witness called, sworn, and examined on the part of Mr. Hinckley, deposes and says as follows, to wit:

133 Direct examination by Mr. MCCONNELL:

Q. What is your name, age, residence, and occupation?

A. Amos L. Hopkins. 31 years old. I reside in Peoria. I am an engineer by profession.

Q. What are your engagements at present, or rather what business are you temporarily following?

A. I am the receiver of the Toledo, Peoria and Warsaw Railroad.

Q. For how long a time have you been the receiver of that railroad?

A. Since February a year ago. A year ago last February.

Q. Do you find it necessary in the course of your business as receiver of this property to be constantly upon the line of the road?

A. No, sir; I do not.

Q. You maintain, do you not, an office in the city of Chicago?

A. I have a desk here; I don't have any office.

Q. Are you acquainted with the position, the amount of business, and generally of the condition and circumstances of this Gilman, Clinton and Springfield Railroad, which is the matter in controversy?

134 A. No, sir; I don't think I can say that I am. I have never been over the road. Of course it connects with our line in Gilman, and so I have been during business with it all the time, more or less.

Q. What compensation have you been receiving as the receiver of this Toleda, Peoria and Warsaw Railroad?

A. One thousand dollars a month has been allowed.

Q. That much has simply been paid on account, not in full allowance of your services?

A. Paid on account; yes, sir.

Q. Do you have any charges also against the railroad on account of expenses or anything of that character in addition to this compensation? Have you made any?

A. Yes, sir.

Q. What were the character of those expenses?

A. It was compensation for amount actually paid out in the business of the road.

Q. While you were travelling and otherwise attending to the business of the company?

A. Yes, sir.

135 Cross-examination by Mr. WILLIAMS:

Q. What is the length of your line of road?

A. 237 miles including what is leased.

Q. You have given it your entire attention, have you not, since you were receiver?

A. Yes, sir.

Q. You have done nothing else except attend to the interests of that property?

A. No, sir; except my own private business.

Q. Your own private business has not occupied any portion of your time, has it, to any extent?

A. Yes, sir; it has some of my time. It has not taken me away from my duties there at all.

Q. Where do you stay? Where is your place of business?

A. In Peoria.

Q. On the line of your road?

A. Yes, sir.

Q. You give it your entire personal supervision and attention?

A. Yes, sir; I do.

Q. What are the earnings of that road per annum, if you recollect?

136 A. I don't remember the earnings last year. I think the road this year will earn about one million three hundred thousand dollars, very nearly that.

Q. Do you think that a man ought to have as much compensation for taking charge of a road that earns less than three hundred thousand dollars as one that earns a million and three hundred thousand?

A. I don't think so on general principales, no, sir; but I think there might be circumstances when he ought to have more.

Q. Do you think that a man who was president of the Chicago and Paducah Railroad Company, an Iowa railroad company, the Chicago, Pekin and Southwestern Railroad Company, was trustee for the Kingsbury estate here, which occupied a considerable portion of his time, and was at the same time building a railroad in Iowa and interested in the management of the Steel Mills at Joliet, and who spent two days in a month in visiting the Gilman Railroad, ought to have very much salary for that alone?

137 A. I don't know anything about the facts of the management of the road at all.

Q. Suppose he only went there two days in a month, and had all these other things to attend to, would he be entitled to much salary?

A. I think that if I was president of the railroad, and had to determine the compensation in a case of that kind, I should determine according to the results which the man accomplished. It wouldn't make any difference if he didn't spend any time there; if he could accomplish those results without it, I shouldn't care.

Q. Suppose that, at least the twelve months he was receiver, Mr. Hinckley carried from seventy to eighty thousand dollars cash balances and used it in his own private business, and not for the benefit of the railroad company, is that worth anything to him?

(Objected to by Mr. McCONNELL.)

A. Yes, sir.

Q. You say that would be worth something to him?

A. Yes, sir; I should think it would be.

138 Q. Suppose he used that money that ought to have been used in keeping the road up, and let it run down and get in most wretched repair and condition, would that affect his right to compensation in any way?

A. I should say it would. Yes, sir. I hope he didn't do that.

Q. You keep your road in good condition, don't you?
A. Try to do so. Yes, sir.
Q. And have expended the earnings in the interest of the road?
A. Yes, sir.
Q. All the time, have you not?
A. Yes, sir; I have.
Q. Have you kept any such balances as that of cash on hand?
A. No, sir; we never had any balances except what was necessary to pay our running expenses, and sometimes have been in debt for that purpose.
Q. You have not, out of earnings of a million and three hundred thousand dollars, been able to keep any considerable cash balances?
139 A. No, sir; we have been in debt most of the time.

Redirect examination by Mr. McCONNELL:

Q. Do you on your road have a purchasing agent?
A. No, sir.
Q. Do you do your own paying?
A. No, sir; we have a paymaster. He acts as a clerk in the office besides that; but he is called paymaster.

Testimony of Judson *Anderson.*

ADNEY ANDERSON, called and sworn on the part of Francis E. Hinckley, testified as follows:

Direct examination by Mr. McCONNELL:

Q. What is your name, age, residence, and occupation?
A. Adney Anderson; age, 48 years; occupation, civil engineer; residence, Chicago.
Q. What is your present employment?
A. I am receiver of the Chicago, Danville and Vincennes Railroad.
Q. What compensation have you been allowed per month in the management of that railroad as receiver?
140 A. My compensation has never been absolutely fixed; but I have been drawing at the rate of nine hundred dollars per month.
Q. That is on account, I suppose?
A. On account.
Q. Do you propose to regard that as final?
A. I do not.
Q. You expect, then, to receive more?
A. I do.

Cross-examination by Mr. WILLIAMS:

Q. You have been receiving this sum by order of court, I suppose—by allowance of the court, have you?
A. I have.
Q. What is the length of your road?
A. The length of which I am receiver is 132 miles. The length I am operating is 159.
Q. Do you give your entire personal attention to this business?
A. Pretty much.
Q. You have no other business but this?
A. None of any consequence, except incidental.
Q. Where do you keep your office—your main office?
141 A. In Chicago.
Q. The road starts from Chicago, does it?

A. It does.
Q. This is headquarters of the road?
A. Yes, sir.
Q. You are engaged in your office or on the line of the road in attending to its business constantly?
A. Pretty constantly. Yes, sir.
Q. About what are the annual earnings of that property?
A. About eight hundred thousand dollars.

Redirect examination by Mr. McCONNELL:

Q. You do not find it necessary in the management of this property that you should remain constantly in the city here, do you?
A. No; it is not necessary.
Q. You could give as efficient a management of this railroad, could you not, and be absent much more of the time than you are, provided your men were such as you could depend upon?

142 A. I don't know about that. That would depend something upon how much I valued my own personal supervision of it. The road could be managed perfectly well if I was absent a great deal more than I am.

Q. Under your general directions, of course, I mean to say?
A. Yes; but I have thought it better to remain here.
Q. Is not the position of a receiver or of a president—does he not exercise his duties rather in general directions and in general management than in mere attention to details and personal presence upon the property—matters of that kind?
A. Yes; it is more a matter of general oversight than personal attention.

Recross-examination by Mr. WILLIAMS:

Q. You think, then, as I understand you, that your personal supervision is not necessary?
A. No, no; I do not mean to say that.
Q. Don't you think it would be better for the road if you would spend all your time upon it; better for the trust that you represent?
A. Yes; I think it would be.

143 Q. And you do substantially spend all your time?
A. Yes; that is my purpose. It is my main business. Well, I may say it is my only business.

Q. And you find it enough, I suppose, for one man to attend to properly, don't you?
A. Yes. It is like everything else; a man can devote his whole time to almost anything.
Q. And it pays, too, to do so, doesn't it?
A. I think it does.

Examination by Mr. McCONNELL:

Q. If the general manager of a railroad should go over his line, say as often as once a month, and be engaged in a personal examination of the property as often as and upon such a trip should see all of his officers, who are under him, and employees, and kept his office in the city of Chicago, with which his railroad had a close connection, and to which the bulk of its business was directed, would you not call that, provided the results of the business were good, a successful management and a sufficient personal supervision to have paid to it?

144 A. Yes, I should; for I think it is oftener than most general managers see the property over which they have control in this country.

Q. How often do you find it necessary to travel over the length of your line?

A. I go over it very seldom. I haven't been over it but three or four times since I have been here.

Q. And the business under your management has been increasing, has it not?

A. Yes; the business of the road has increased.

Q. Its earnings also?

A. Yes; its earnings have increased.

Examination by Mr. WILLIAMS:

Q. Suppose there was a small road with earnings of less than three hundred thousand dollars per year, gross earnings, and a receiver would carry cash balances of from sixty to eighty thousand dollars per year, and let the property run down so it was ready to fall to pieces,
145 would you call that good management of a trust, using this money in his own private business?

A. That is a matter of opinion.

Q. I want your opinion as to whether that is a proper management of a trust?

(Objected to.)

Q. Let the cars and road-bed and everything in connection with it get badly out of repair, and use this large balance in his own private business, would you call that good management of a trust property?

A. If the circumstances were exactly as you state, I should not.

Q. I am stating circumstances.

A. It would depend upon the order of the court under which he was acting.

Q. Suppose there was no order about it, a man was doing it of his own motion?

A. I should not think that would be very good management.

Q. It is worth a good deal for a man to have seventy or eighty thousand dollars all the time when he is engaged in business, isn't it?

A. Yes; rather more, I judge.

146 *Testimony of H. S. Morse.*

H. S. MORSE, a witness produced, sworn, and examined on the part of Mr. Hinckley, deposed as follows:

Direct examination by Mr. MCCONNELL:

Q. What is your name, age, residence, and occupation?

A. H. S. Morse; age, 41; residence, Garrett, Indiana; occupation, assistant master of transportation of the Chicago Division of the Baltimore and Ohio Railroad.

Q. How long have you been in the railroad business?

A. About 25 years.

Q. What has been the character of the business that you have ordinarily attended to?

A. Formerly I was train dispatcher; that was my first business—as ticket agent and train dispatcher. For twelve or fourteen years I have been superintendent of roads or division superintendent.

Q. Have you ever been over the line of the Gilman, Clinton and Springfield Railroad Co.?

A. I have.

Q. When?

A. I was over the road last September.

147 Q. At whose instance?
A. Mr. Seyton's.
Q. What did you do in the course of that trip?
A. Examined the condition of the track, stations, fences, &c., buildings, engine-houses, water-tanks.
Q. Along the entire line of the road?
A. Yes, sir.
Q. What did you determine to be the condition of the stations along the line of the road? Were they in good repair or not?
A. They were in general good repair.
Q. How about the road-bed?
A. I cannot say that the road-bed was in good order, but still there was no gravel. The road is not ballasted at all except with native soil and native dirt. No gravel on the track—like a large majority of second class roads. You cannot call a road-bed in good order unless it has a foot or two of gravel under it. There is no gravel under that road any of the distance, yet the track was very smooth for that kind of road.
148 The rails were not bent, and but few of the rails bruised, except on the western end between Clinton and Springfield. The track was very smooth for that kind of a road; full as much so as the average of roads in Iowa or Illinois for the last year for that season of the year. It was an extremely wet season.
Q. There had been but recently a very severe freshet, had there not?
A. Yes, sir.
Q. What had been the character of the damage that that freshet had done to the property?
A. Several culverts had been washed out, and the bridge over the Sangamon River was also damaged considerably.
Q. The general result of that freshet was, was it not, to put the road in a rather bad condition anyway?
A. Yes, sir.
Q. Did you find that the culverts along where it had been washed out by the freshet had been repaired at that time?
A. I believe all had been repaired but one, and that was in a forward state of completion.
149 Q. Did you find any preparations going forward that had been made by the previous management looking to repairs along the line of the road?
A. Yes, sir. We found they were distributing fencing material. There was only about twenty-five miles of the road fenced, if I remember right, and I don't know as there was as much as that. There was material being distributed for the fence—ties being distributed and iron.
Q. Were the water-tanks and arrangements of that kind in good condition?
A. They were.
Q. The platforms around the station-houses were in good shape, were they?
A. Yes, sir.
Q. Did you examine the rolling-stock at that time?
A. Not particularly; Mr. Jeffries, master machinist for the Illinois Central Railroad, did that part of the work.
Q. It was your special duty to examine the road-bed and station-house, water-tanks, &c., along the line of the road?
A. Yes, sir.
Q. At that time did you make a report of your examination?

150 A. I did.
Q. Have you a copy of it?
A. I have.
Q. With you?
A. No, sir.
Q. Can you tell on examination whether or not this paper is a copy of that report?
(Showing the witness a paper marked Exhibit A.)
A. I should say it was; this is a copy.
(Paper introduced in evidence.)

By Mr. WILLIAMS:

Q. You didn't make that copy, did you?
A. No, sir.

Mr. MCCONNELL:

Q. You are confident this is a correct copy of that report?
A. Yes, sir.

Cross-examination by Mr. WILLIAMS:

Q. What experience had you in examining roads prior to the examination of this?
A. I was engaged about fourteen years on the Northern Central Railroad?
Q. In what capacity?
151 A. As train dispatcher and assistant superintendent and acting superintendent of the northern division.
Q. How long were you assistant sup't prior to the time you made this examination?
A. I should think in the neighborhood of fourteen or fifteen years; that is, assistant and division superintendent.
Q. Did you carefully examine this track and road-bed and bridges?
A. Yes, sir; we took an engine and went over it specially.
Q. You did not walk over it, then?
A. No, sir.
Q. How long were you in making this examination?
A. I think we were two days.
Q. Had you ever seen the road before?
A. No, sir.
Q. In what condition did you find the ties on that road?
A. Found them on the east end of the road in poor condition. I think in the report I made there was about thirty-eight miles of the track composed of hemlock ties, and those were in a forward state of decay.
152 Q. All needed renewing, didn't they?
A. I think I reported that it required about fifteen hundred to a mile.
Q. Was not that portion of the track absolutely unsafe to operate?
A. Well, it depends on how it was operated.
Q. To operate according to the ordinary schedule of time, freight and passenger?
A. The way they operated it there they proved it to be safe.
Q. Didn't you regard it as in an unsafe condition to do a full winter's work?
A. Yes, sir; to do the winter's work, I would.
Q. It ought to have had very heavy repairs, fifteen hundred ties to the mile, that summer.

A. I recommended fifteen hundred to the mile.
Q. What time was that?
A. In September.
Q. Is it not proper to wait until September to begin to make those repairs upon a road bed, is it; especially where it is not ballasted by gravel?
A. Where a road bed is not gravelled it does not make any difference when you put in the ties, hardly.
153 Q. You say it doesn't make any difference when you put in fresh dirt?
A. It will answer just as well in August and September as in the spring.
Q. Does it require any settling in the summer time to give solidity to the road bed before frost comes in the fall of the year?
A. No, sir; I should apprehend not.
Q. Did you ever have anything to do with the construction of a road?
A. Yes, sir.
Q. You have built dirt roads, have you?
A. No, I havn't built roads. I have helped to lay tracks.
Q. In what capacity?
A. As superintendent.
Q. What is the proper time of year to put a road-bed in condition?
A. As soon in the spring as you can.
Q. It is very bad management if you have idle funds on hand, to let a road-bed get to it in that condition late in the fall, isn't it?
A. Yes, sir. But understand me: This kind of soil I am not used to at all, but I understand it is a kind of soil that doesn't heave much; but it isn't like a gravel road with two feet of gravel.
154 Q. Do you understand this soil doesn't pack any, and settle any?
A. Yes, it does.
Q. It does pack and settle?
A. It does pretty well where it is put except when disturbed by rains. After every rain it has to be put up again.
Q. You understand that by throwing up this prairie soil it remains in the same volume without settling, do you; or don't you understand it settles a great deal more than a stiff clay settles?
A. No; I do not.
Q. You found thirty-eight miles of track which needed fifteen hundred ties to the mile, you say?
A. Yes, sir.
Q. How was the balance of the track?
A. I forget just what I reported in the balance, but the balance of the road had oak ties, and of course they would not rot out so readily as hemlock ties, and were in better condition.
Q. These buildings, &c., were all substantially new, were they not?
A. Yes, sir.
155 Q. You did not discover any evidence of any recent repairing on them at all, did you? Simply the buildings had not begun to decay?
A. Yes, sir.
Q. They had no recent repairs, that you saw?
A. No; I believe not.
Q. Paint, or anything else?
A. No, sir.

Q. They seemed to have been just as they were built, and were not very old, and were in pretty good condition?

(No answer.)

Q. Now about the iron. Did not this road need a great deal of iron on its track, or a good deal?

A. It needed iron.

Q. A good deal of it, didn't it, too?

A. The west end needed iron; but I have seen a good many worse roads in Iowa and Illinois than that; a main road, too. This road is a second class road. It isn't like a main road running express trains. The safety of a road can be judged by the number of accidents on it, usually.

156 Q. Was this track in line?

A. I' was in pretty good line; yes, sir.

Q. Was it surfaced properly?

A. It was in very good surface except where the recent rains had washed the track away, or damaged it.

Q. Did you test the line or surface of the road in any way except from the eye in passing over on an engine.

A. No, sir.

Q. You passed over on an engine and only stopped when you came to stations; wasn't that the truth about it?

A. We stopped at weak points, culverts and bridges.

Q. Between those points you didn't make any stop at all; you just passed over the road on the engine?

A. Yes.

Q. When you came to a station you would stop; when you came to a culvert you would stop. Now were not the culverts in very bad condition? You say they were undergoing repairs when you were there, do you not?

A. Yes, sir.

157 Q. Don't you know that all the repairs they had had were under the supervision of Mr. Seyton?

A. No, sir; I don't know that they were, because Mr. Seyton had not possession of the road until after I went there.

Q. When did you go there?

A. I went there when the road was turned over to Mr. Seyton; the day it was turned over.

Q. The day it was turned over?

A. Yes; I think the day it was turned over.

Q. Does your report give the date of your examination?

A. The day or day before.

Q. Do you say that you found ties along the road when you went there, or fencing material being distributed?

A. Yes, sir.

Q. Where and in what amounts?

A. In my reports I give the amounts; I don't remember just what it was. The iron on that road was fifty-three-pound iron, and when

158 it was laid it was three-quarters spiked. None of the roa l gravelled; that is, ballasted with gravel.

Q. I want to ask you if, in your opinion, any man can take this report and form any intelligent opinion of the condition of that property from this report at that time?

A. I should think he could.

Q. You state here about twenty-five miles of the road fenced, and ma-

terials for nearly as much more fence was being distributed. Where did you see any being distributed at that time?

A. In different points along the line.

Q. Tell us any one point that you saw any material for fence being distributed?

A. I don't know that I remember just the point.

Q. Did you take any inventory of the amount that you saw?

A. We estimated it. You will find the amount of that in Mr. Jeffrie's report.

Q. Had Mr. Jeffrey anything to do with the fencing material along the road?

A. Yes, sir; he took the account of the iron that was being
159 distributed and the ties and fencing. That was in his department.

Q. Don't you know that Mr. Jeffrey was simply a mechanic, and went there to examine the machinery and nothing else?

A. No, sir; I do not. I know he is a mechanic and went there to examine the machinery, but he took the account of the iron, and has it in his report. Mr. Seyton has his report. I only alluded to it casually, because I thought his report would cover it.

Q. You don't pretend to know how much, or did not at the time know how much fencing material was being distributed?

A. I know we all estimated it as enough for about twenty-five miles.

Q. Who did you mean by "all"?

A. Mr. Conkling, who was the acting superintendent of the road at the time, and Mr. Jeffrey and myself. We all agreed in the statement.

Q. Was Mr. Seyton along?

A. No, sir.

Q. Have you any idea how much material it would take to fence twenty-five miles?

160 A. I have not just now; not from memory.

Q. Could you tell?

A. I could very easily figure it up.

Q. Give us some estimate of the number of car loads of lumber it would take to build twenty-five miles of fence.

A. I could not do it just now. Besides all that, it depends upon how a man fences a road; how many boards he fences it with, and how wide the boards are.

Q. Would a hundred cars carry enough material to fence 25 miles of road; or would two hundred cars?

A. I should think a hundred cars would.

Q. How many thousand feet to a mile does it take?

A. I don't remember.

Q. How many feet in a mile?

A. I don't remember. I could not tell here without reference to some figures.

Q. How many posts to a mile?

A. On the Baltimore and Ohio we use three posts to every sixteen feet.

Q. That is three to a rod. How many rods in a mile?

A. Three hundred and twenty.

161 Q. That would be substantially a thousand posts to the mile. How many cars would that load?

A. There are tables. If you want to get at it, I can get a table.

Q. About how many posts can you load in a car?

A. The question is simply absurd.

Q. Have you any idea how many fence posts you can put into a car?

A. That depends upon the size of the fence posts.

Q. Average posts?

A. Average posts that one road used would not be like another's.

Q. Such posts as you saw being distributed, if you saw any being distributed. If you saw them you know what they were.

A. We put in cedar posts.

Q. I am not talking about what you put in; I am talking about the posts you saw distributed there. You must have seen a great many, if you saw enough to make fifty miles of fencing.

A. You can get certainly five hundred posts on to a car, or more.

162 Q. Then a thousand to a mile would be about ten cars to a mile, wouldn't it?

A. Yes, sir.

Q. And twenty-five miles would be two hundred and fifty cars—one string of fence?

(No answer.)

Q. That is two to a mile, twenty-five miles of track, would be fifty miles of fence. That would be a hundred cars of posts, wouldn't it?

A. Yes, sir.

Q. Now it would take more cars to carry the fencing a good deal than it would the posts, wouldn't it? There is more lumber in the fence than the posts, isn't there?

A. No, I should think it would be just about even. We have carried six hundred telegraph poles on a car.

Q. Then to fence twenty-five miles of track would take at least two hundred car loads of material, wouldn't it?

A. No, sir; I should think not.

Q. Come very near it, wouldn't it?

A. In the posts I find——

163 Q. How many car loads of material did you see being distributed there?

A. We didn't see it by the car load. We saw it laying along the track already distributed.

Q. You think you saw two hundred car loads along there?

A. We have hauled six hundred telegraph poles, come to remember, on a car. They are thirty feet long. That would make over two thousand fence posts we could get on a car.

Q. What kind of condition did you find the trestle works in generally along the line of that road?

A. In a fair condition.

Q. How did you find the bridges at Salt Creek and Sangamon?

A. At Sangamon Creek the trestle had washed away on the west end, and the dirt around the piling had washed out, and the west end of the bridge had settled five or six inches down stream. We recommended a stone abutment for that end of the bridge.

164 *Testimony of Francis E. Hinckley.*

FRANCIS E. HINCKLEY, called as a witness on the part of and examined by Mr. Williams, deposed as follows:

Q. Were you not during most of the time you were acting as receiver of the Gilman road president of the Chicago and Iowa and had the management of it?

A. I was.

Q. What salary did you get for that position?

A. The salary has never been fixed.

Q. Didn't you draw a salary during that time from that road for your services?

A. I have received payments during that time on account, but no salary has been fixed.

Q. To about what extent did you receive payments on account for your services in the management of that road?

A. I could not say.

Q. Can't you give any approximation of the amount?

A. No, sir.

165 Q. As much as five thousand dollars a year?

A. I expect it to be more than that a year.

Q. During all the time you were receiver of the Gilman were you not president of the Chicago and Paducah Road, engaged in the management of that route, too?

A. I was president of the Chicago and Paducah Road from the time I was appointed receiver of the Gilman, the 26th of November, until the first Wednesday in March following, about three months.

Q. Did you receive a salary for that; and, if so, how much?

(Objected to by Mr. McCONNELL.)

A. I didn't receive any salary.

Q. Did you receive no compensation?

A. No compensation.

Q. You were doing that simply as a labor of love, were you?

A. It has proved so.

Q. Haven't you a claim for your services?

A. No, sir; never had and never made a claim.

166 Q. During the time you were receiver for the Gilman were you not president of the Chicago, Pekin, and Southwestern Railroad Company, and were you not engaged actively in the operation of that road?

A. I was during the whole time.

Q. Did you receive a salary for that; and, if so, how much?

A. I received no salary for it.

Q. Did you receive no compensation?

A. No compensation.

Q. Have you any claim for compensation?

A. I have no claim for compensation.

Q. You were doing that merely as a labor of love, were you?

A. That would scarcely be a labor of love.

Q. What would you call it yourself if you were to give it a name?

A. I am interested in the road and my compensation will be determined by the future.

Q. You expect to derive some compensation for your services, do you not, either directly or indirectly?

A. Indirectly.

Q. Didn't you spend a good deal of your time superintending the business of that corporation?

167 A. Very little of my time. I never went over the road more than once during the time I was receiver of the Gilman Road.

Q. During the time you were receiver of the Gilman Road were you not engaged in building a railroad in the State of Iowa?

A. I was interested in a contract for building a road in Iowa.

Q. Wasn't you the active man that controlled that work?

A. I was.

Q. During the same time were you not trustee for the Kingsbury estate in this city?

A. I was not.
Q. None of the time?
A. No, sir.
Q. Wasn't you connected with the Kingsbury estate in some way?
A. I was agent for the guardian.
Q. You got a salary for that, did you not?
A. I did.
Q. How much per annum?
(Objected to by Mr. McCONNELL.)
(No answer.)
Q. Do you decline to answer?
168 A. No; I do not decline to answer. For the moment I have forgotten the amount.
Q. Give it as near as you can.
A. I think it was at the rate of four thousand dollars a year.
Q. Did that occupy any considerable portion of your time and attention?
A. But very little of it. I had a competent man who attended to the matter.
Q. Hadn't you a contract for building a railroad somewhere in this State at the same time?
A. No, sir.
Q. Were you not building a railroad from Rockford to Rochelle during the time you were receiver of the Gilman Road?
A. There was a road built from Rochelle to Rockford.
Q. Wasn't you interested in that?
A. No, sir.
Q. Prior to the 27th of August, 1875, were you not some time engaged in building this road from Rockford to Rochelle?
A. The road was built from Rochelle to Rockford prior to July 1, 1875.
Q. Were you not engaged in it, interested in building that road,
169 and actively engaged in it?
A. Just my relations with that matter I do not wish to state.
Q. Didn't you use quite a number of cars of the G., C. & S. in constructing that road, or were they not used in carrying iron and materials to construct it?
A. Some of the cars of the G., C. & S. were used in interchange between the two roads.
Q. Did you ever return to the G., C. & S. any account of the mileage on these cars for this work?
A. The books of the Chicago and Iowa road show a balance for mileage in favor of the G., C. & S. road.
Q. For what services?
A. For the services you allude to.
Q. Do you now say that the G., C. & S. ever in any way got credit for the service of its cars in transporting materials and work on this Rockford and Rochelle road?
A. I say that the G., C. & S. has a credit for mileage upon the books of the Chicago and Iowa road for that service.
Q. Do you know how much that is?
A. No, sir; I do not.
170 Q. Your reports show that for the last year you carried large cash balances, ranging from sixty to eighty thousand dollars, monthly balances. What did you do with that money?
A. I carried that money as a protection for the liability which I had assumed on the G., C. & S. road.

Q. Didn't you use that money in your private business?

A. I decline to answer that.

Q. If you kept it on deposit anywhere, where did you keep it on deposit?

A. I kept an account with Ridgely National Bank of Springfield of all moneys received on account of the road.

Q. Do you keep these balances on deposit there?

A. From the Ridgely National Bank I drew the excess over and above what was required for current expenses, and kept it in my private account.

Q. Did you get any credit from the Ridgely National Bank of Springfield for interest on balances of account there? Didn't they pay you interest on balances?

A. They did not.

171 Q. Do you say now they did not allow you any interest on balances?

A. Yes, sir.

Q. I will ask you again if you are positive that they did not allow you any credit—any interest on balances of account in that time?

A. I am quite positive. Their books would show if there was any such allowance.

Q. How large did you generally keep your balances in that bank?

A. I should prefer that their books would show.

Q. Have you any recollection?

A. It varied.

Q. It was a very small proportion of your cash balances that you kept there, was it not?

A. It was sufficient to pay such bills as we had to pay there.

Q. Was it not a very small proportion of your cash balances that you kept there?

A. At times it would have been a small proportion.

Q. I want to know if at this same time you did not hold an office in the Joliet Steel Mills, and draw a salary from that—at the same time that you were receiver of the Gilman?

172 (Objected to by Mr. McCONNELL.)

A. I was director of the Joliet Iron and Steel Company until March, 1875, but never drew any salary, directly or indirectly. During the time I was receiver of the Gilman road I never gave it more than a few hours' time.

Cross-examination by Mr. McCONNELL:

A. The Chicago and Paducah Railroad does not run into the city of Chicago.

A. It does not.

Q. While you were president of that road how many times a month did you go over it?

A. I never went over it more than three times since it was constructed. I have been interested in it for five years.

Q. While you were president of the Chicago, Pekin and Southwestern Railroad, how many times did you go over that line, and how much time were you obliged to spend upon its business?

A. During the whole time I was receiver of the Gilman road I went over the Pekin road but once, and spent but very little time in its management.

173 Q. You had a large personal interest in that railroad?

A. I did have.

Q. And yet while its president you acted in that capacity and gave it all the time and attention that it needed, and all that the stockholders demanded?

A. All that was necessary, and all that was required to properly run it.

Q. The Chicago, Pekin, and Southwestern does not run into Chicago, I believe.

A. It did not at that time. It was a hundred miles from here to Streator, the nearest point to Chicago.

Q. Yet you maintained the office of the presidency of both the Chicago and Paducah and the Chicago, Pekin and Southwestern in Chicago, did you not?

A. During the whole time.

Q. The Chicago and Iowa Railroad Company does not come into the city of Chicago, does it?

A. It does not.

Q. How many times while you were receiver of the Gilman, Clinton and Springfield Railroad Company, and acted as president of the Chicago and Iowa, were you obliged to go over that line?

174 A. I never went over it but once during the time, or perhaps twice.

Q. You maintained your office in the city of Chicago, did you not?

A. I did.

Q. You gave it all the attention that it needed?

A. Yes, sir.

Q. The management during that time was effective?

A. It was.

Q. And the railroad was regarded as successful in its management?

A. It was.

Q. How much time did you find it necessary to spend upon your contract building in Iowa?

A. It would be difficult to say just how much time. The matter had to be touched up occasionally; occasionally a letter written about it.

Q. How much of your personal presence did you give to that there on the ground?

A. Not any.

Q. And yet the construction work went on under competent men, as if you had been upon the ground, to your satisfaction?

A. During the time that I was receiver of the Gilman road but

175 little was done in the construction of the Iowa road.

Q. While you were receiver of the Gilman, Clinton and Springfield, did you not pay considerable more attention to it than you did to the other roads in which you had an interest, and what was your general plan connected with the conduct and management of it?

A. I gave very much more of my time and of my thoughts to the management of the Gilman road than all the other interests that I had anything to do with. It was my habit, and during the time I was receiver I went over the road regularly once a month. I examined it carefully. I saw every employee and paid him his wages myself. I examined the cars, machinery, and shops minutely. I purchased everything that the road needed myself. I examined the bills personally when they came in. I approved every voucher that was paid during my administration. I gave every check myself. I spent as much time upon the line of the road as the interests of the road required. I was in close communication with the officers of the road, with the

176 superintendent particularly, almost daily. I knew as fully what

was transpiring upon the line—almost as fully what was transpiring upon the line as if I had been at any point upon it. At the road was turned over to the trustee I had purchased a hundred thousand feet of fencing, which was being delivered. I had purchased ten thousand ties, which were delivered soon after I left the road. I had purchased some steel rails, which were delivered about that time. My recollection is that I had arranged for rerolling some iron rails. Everything was being done to run the road economically.

Q. Hadn't you been very seriously embarrassed during the spring by high water?

A. The greatest embarrassment was in the month preceding the expiration of my receivership. At the time I delivered the road the streams were very high. There were some needed repairs which could not be made on account of the high water. The Sangamon bridge needed repair, but the water was too high to make it practicable.

177 It was, however, safe for doing business. I passed over it myself three times about that time, and gave it a personal examination.

Q. During all the time of your receivership were you in close communication by telegraph and letter?

A. Both by telegraph and letter.

Q. With all the officers of the road?

A. With all the officers of the road.

Q. What, in your own opinion, would be the comparison as to effective management of this railway, whether residing in Chicago or upon some point on the line of the road; could you have operated the road as its general manager to any better advantage had you maintained your office on the line of the road?

A. In my judgment, the proper place for the manager of that road is Chicago; its business is interchanged with Chicago, more than any other one place. It is much more convenient to meet the managers of connecting lines at Chicago than anywhere else. The interests of the road would be better served by its general manager spending the

178 most of his time in Chicago than by his being on the line, as evidence of that my roads I manage in that way.

Q. What kind of men did you have under you during your receivership?

A. I had first class men in each department. My superintendent received his education first upon the Erie, and spent about twenty-five years in the management of other roads. He is one of the best and most competent superintendents that I have ever met. My general freight agent was the same as had preceded me and the same as is now upon the road. My ticket agent was competent for his place and economical in the management of his department. The road master and master machanic were industrious, prudent and economical men. They performed their duties faithfully and well. The conductors were good men for their places.

Q. You had personal acquaintance with all these men that you speak of, and generally with the men that you had at work upon the road, did you not?

A. I did.

179 Q. Did you keep yourself informed as to the way in which these men discharged the responsibilities and duties of care and service that you expected of them?

A. I did; examined each of them in their departments every month and saw that everything was being well managed.

Q. During the receivership did you act as purchasing agent and purchase all the supplies of the road?
A. I did.
Q. Who acted as paymaster?
A. I did, personally.
Q. Who examined and approved vouchers?
A. I did.

Redirect examination by Mr. WILLIAMS:

Q. You say that you have purchased a hundred thousand feet of fencing; is it not true that none of that was delivered along the line?
A. It was being delivered, my recollection is, at the time I delivered the road. It was not all delivered at that time; some was delivered subsequently.
Q. That is all that you purchased during the time you were receiver, is it not?
A. No, sir.
180 Q. How much did you purchase during the whole time of your receivership—fencing?
A. I could not say from memory, but the books will show. There was two or three considerable purchases before that time.
Q. All the previous purchases would not aggregate a hundred thousand feet?
A. My judgment is, they would.
Q. A hundred thousand feet would make about eight miles of fencing, would it not?
A. About ten miles of four board fence.
Q. Had you purchased posts?
A. Yes, sir. The posts were got mostly along the line. We didn't ship them from Chicago.
Q. You had purchased ten thousand ties, you say; is it not true that not one of them was delivered at the time you gave up the road?
A. I didn't say they were delivered.
Q. As a matter of fact, don't you know they were not delivered, that none of them were delivered?
A. The arrangement for the ties——
Q. You hadn't paid for any of them, had you?
181 A. No, sir. The arrangement for the ties was that they were to be delivered, a portion of them at Springfield, and another portion at Gibson, and I do not know just where the ties were at the time I turned the road over.
Q. You had not paid for either the fencing or the ties?
A. The fencing has been paid for since.
Q. It was not paid for at that time, was it?
A. No. We didn't pay for things until we received them.
Q. You hadn't paid anything on the ties, nor anything on this fencing?
(No answer).
Q. Now you say you purchased some steel rails?
A. Yes, sir.
Q. How much?
A. I think it was forty tons; I am not positive.
Q. It was the sweepings of the Joliet Mills, wasn't it—uneven lengths and refuse?
A. It was a lot of——
Q. Refuse?

A. Short rails.
Q. Uneven lengths?
A. Uneven lengths.
Q. Not merchantable iron?
182 A. Entirely merchantable and good steel.
Q. Are rails shorter than the ordinary lengths and uneven lengths considered merchantable?
A. Yes, sir; not at the same price as longer rails.
Q. It was refuse material, wasn't it?
A. No, sir.
Q. Wasn't it a class of lots that had been thrown out from time to time?
A. No, sir; it was rolled nearly on purpose; it was made for me.
Q. You had it made of unusually short and uneven lengths, did you?
A. Yes, sir.
Q. What did you have it made that way for?
A. Because it was just as good as any other and it was bought at less price per ton.
Q. They would manufacture it that way for less?
A. Yes, sir.
Q. You hadn't paid for that, had you?
A. I gave a check in payment for that about the time that I gave the road over to Mr. Seyton, and for some reason which I do not now
183 know, the check was not paid; it was afterwards paid.
Q. By you?
A. Yes, sir.
Q. So that that is now paid for?
A. Yes, sir.
Q. Didn't that road need an immense amount of ties to put it in proper condition to do the following winter's work, and did not more than thirty miles of the north end substantially need all new ties?
A. All railroads, at nearly all times, need new ties. It is the custom of all railroad managers to constantly put them in; the north end of the road was a little worse than the south end, and needed more ties.
Q. How many miles of the north end of that road was laid with hemlock ties?
A. I think it is thirty-four.
Q. Were they not all substantially rotten?
A. No, sir; they were not.
Q. Wasn't the majority of them rotten?
A. There were some rotten ties.
Q. Wasn't a majority of them rotten?
A. No, sir; I don't think a majority of them were rotten.
184 Q. How many ties to the mile were in that road?
A. 2,640.
Q. Wasn't there more than half that many rotten ties in every mile of that thirty-four miles?
A. The interests of the road would not have been served by replacing one-half of those ties; a less number would have been ample for that season.
Q. In your judgment, how many did it require per mile, that thirty-four miles?
A. I think ten thousand would have been sufficient to have carried the road through the winter.
Q. Ten thousand for the whole?
A. Yes, sir.

Q. You would put them all in that, would you?
A. I should have put ten thousand north of Gibson?
Q. How many would that have been per mile?
A. That would have been about three hundred.
Q. What is the proper time of the year to put a road-bed in condition?
A. Any time between the 1st of May and the 1st of December.
185 Q. Do you say there is no difference when it is done within those times?
A. Something would depend upon the condition of the weather, whether it was very wet or dry.
Q. Is not the proper time to put a track in repair as soon as the spring opens?
A. No, sir; the best time is in September and October.
Q. You say that is the best time?
A. Yes, sir.
Q. So the dirt cannot settle before winter?
A. So the dirt can settle and be ready for winter.
Q. It will settle better then than earlier?
A. Yes, sir.
Q. You think it will?
A. Yes, sir, I do.
Q. So that the idea of repairing roads in the spring of the year, in your judgment, is a mistake; the proper time is in the fall?
A. I think the best time to repair a track is in September and October; that has been my experience.
186 Q. You think the ground will settle and be in better condition than if done earlier in the season; that is your judgment, is it?
A. It is my judgment.
Q. You think the summer packing is a disadvantage?
A. Yes; I think it gets packed too much and your joints get down.
Q. Gets too firm?
A. No, sir; your track gets out of line and out of surface; if you do it early in the season you have got to do it over again; if you do it in September and October your track is in good condition for the winter.
Q. Then Mr. Morris was very much mistaken when he told us there was material along that line of road for twenty-five miles of fence, wasn't he?
A. I have stated to the best of my recollection the facts as to the material.
Q. If there had been all that you purchased, there would only have been enough for a string of ten miles; that would have been five miles of road?
187 A. I had propositions at the time for more fence, which were not consummated, and which would have been consummated and the fence delivered and put up had I remained upon the road.

At the conclusion of the examination of witnesses Mr. McConnell stated as follows: Mr. Hinckley gives notice that he wishes to examine D. H. Conkling, the superintendent of the railroad during his receivership, and E. P. Rockwell, the roadmaster during the same period; W. B. McKenney, master mechanic during the same time, and W. H. Ferry, formerly receiver of the Rockford, Rock Island and St. Louis Railroad Company; also that he had expected to examine the said witnesses upon this day, but for some reason not well known to him they have not appeared in answer to his request, and he is confident that if time should be allowed until Wednesday morning at nine o'clock, he could

have these witnesses on hand, and could proceed to examine them, and close his testimony as he desires. To which Mr. Williams replied
188 as follows: This hearing was first set for the 5th day of June; ten days' notice given of the hearing prior to that time. The parties appeared at that time at the proper place, and the exceptants then closed their testimony. Mr. Hinckley claimed a continuance to Thursday, the 15th instant, and agreed to be ready on that day; which continuance was agreed to. On the 14th Mr. Hinckley applied for a further extension of time until to-day, and it was then and there agreed between the parties that Mr. Hinckley should be ready on to-day, and that he would claim no further continuance on account of the absence of any witness, and with that understanding the exceptants agreed to postpone the hearing until to-day. The exceptants have appeared, and claim that they are entitled to have the testimony closed to-day.

189 *Exhibit A to the deposition of H. S. Morris.*

SPRINGFIELD, ILLS., *Sept. 21st*, 1875.

C. S. SEYTON, Esq.:

D'R SIR: The following report comprises a list of station buildings, engine-houses, shops, water-tanks, &c., &c., with their dimensions and condition, amount of side track and condition of the roadway and track of the Gilman, Clinton and Springfield Railroad at this date:

SPRINGFIELD.

Passenger depot, main building, 18 x 54 feet, with a wing of 21 x 16 ft., of brick, two stories, with a one-story wood addition 16 x 21 ft., containing ladies' and gentleman waiting-rooms, t'k't office, and general officer of the G. C. & S. R. R., baggage-room, 16 x 20, of wood, one story, painted and plastered, car-repairers' shop for temporary repairs, 16 x 18 ft., shed-roof, boarded up and down and painted; engine-house, rough boarded frame, 35 x 130 ft., holds four engines, has two brick pits in one track, and is entered from a 50 ft. Greenleaf iron turn-table; four iron smoke-jacks in roof; no drain to engine pits nor to the turn-table,
190 and no water nearer than the Sangamon (Sangamon River), six miles distant; blacksmith shop, 10 x 20, of rough boards, with one cast-iron forge, adjoins engine-house; freight house, 35 x 120 ft. (sided with corrugated iron, sheet-iron roof), needs another coat of paint, has 4,242 ft. of side track, and cattle yards, with Fairbanks' six-ton platform scales for weighing cattle.

SANGAMON.

Nothing but water-tank and 700 ft. of side track (spur switch).

BARCLAY.

Station-house, 30 x 40, containing waiting-room, office, and fr't room; the plastering needs repairing; has 3,623 ft. of side-tracks and cattle yards.

BUFFALO HEART.

Good cattle yards only.

CORNLAND.

Station-house, 28 x 36, containing office, waiting and fr't rooms; has 960 ft. of side track, and cattle yards.

MT. PULASKI.

Station-house, 30 x 40, containing waiting-room, office, and fr't room; has 2,463 ft. of side-tracks, water-tank and cattle yards.

CHESTNUT.

191 Station-house, 28 x 36, containing waiting-room, office, and fr't room; plastering needs repairing; has 1,020 ft. of side tracks, and cattle yards.

KENNEY.

Station-house, 28 x 36, waiting-room, office, and fr't room; has 934 ft. of side track, and cattle yards.

GRAVEL PIT

(at West Salt Creek), has water-tank and 600 ft. of side track (spur-switch) only.

CLINTON.

Fr't house, 40 x 60; has 2,226 ft. of side track at station, and 1,500 ft. do. at shops and cattle yards; baggage room, 10 x 12. Passengers use Ills. C. depot; shops, engine-house, 65 ft. deep by 60 ft. front; has 3 stalls, with stone pits supplied with water and drainage; originally there was 10 stalls in this engine-house, but 7 blew down last March, leaving seven outlying stalls with stone pits, supplied with water and drained; machine shops, 58 x 84 feet; blacksmith shop, 38½ x 58 feet; carpenter shop, 37½ x 58 ft., all of birch, slate roof, joined together in the order given, with engine-house in front, substantially built and conveniently arranged. The blacksmith shop has five brick forges,
192 a No. 3 Sturdevant blower, one stationary 10 x 20 upright engine, one tubular boiler, 4 ft. diameter, 12 ft. long, and brick smoke-stack 50 feet high; carpenter shop has one track; engine-house is entered from a 54-ft. Greenleaf turn-table; tile drainage to turn-table pit; shops are supplied with water from a well, 19 ft. deep and 15 ft. in diameter, pumped to a tank (18 ft. in diameter at the bottom, and 16 ft. length of staves) by a No. 8 McGowan pump driven by a belt from shop engine; iron house built of rough boards, shingle roof, 18 x 30; sand house, 24 x 12, of rough boards, with heating furnace and drying pan; oil house, 10 x 12, of rough boards. Roof of shops needs repairs; north wall of engine-house needs repair. Water tank at East Salt Creek, 6 miles east of Clinton.

DE WITT.

Station house, 30x45; one waiting-room, office, and fr't-room. Has 1,732 ft. of side track, and cattle yards.

FULLERTON.

Has cattle yards and 1,400 ft. of side track. No buildings.

FARMER CITY.

193 Station house, 30x40, used as a joint fr't house. I., B. & W. depot used jointly for passenger depot. Has cattle yards and 2,728 ft. of side track.

WEEDMAN.

Has water-tank, cattle yards, and one spur switch 375 ft. long.

BELLEFLOWER.

Station house, 30x45, contains waiting-room, office, and fr't-room. Has cattle yards and 1,500 ft. side track.

HARPSTER.

Has spur switch 530 ft. long and cattle yards only.

GIBSON.

Station house, 30x45, containing waiting room, office, and fr't-room. Has 1,320 ft. of side track and a short "Y," also water-tank and cattle yards.

GUTHRIE.

Side track 430 ft. long only. No buildings.

MELVIN.

Station house, 30x36, containing waiting-room, office, and fr't-room. Has cattle yards and 1,270 ft. of side tracks.

ROBERTS.

Station house, 28x36, containing office, waiting and fr't rooms. Has 1,472 ft. of side tracks and cattle pens (Beset tank 2 miles east of Roberts).

194 THAWVILLE.

Station house, 30x40, containing office, waiting and fr't rooms. Has cattle pens and 1,100 ft. of side track.

RIDGEVILLE.

Station house, 28x36, containing office, waiting and fr't rooms. Has cattle pens and 929 feet of side track.

GILMAN.

No buildings except coal platform and sheds, 24x90, with extension for crane, containing a crane and 10 buckets, extension 17x27. Has 4,500 ft. of side tracks. Use Ill. C. depot, engine-house, and water. All buildings are in good order except in a few instances where repairs are mentioned. Station houses are surrounded with liberal and substantial platforms.

Water tanks.—All water tanks are of one pattern, being 18 ft. diameter at bottom, 16 ft. high, and supported on good oak frames, the uprights of which are 12 in. square and well braced. Water is supplied by No. 8 McGowan's pumps, driven by horse power. Each tub is roofed over with common boards. Frames under the tubs are boarded
195 up and stoves used in cold weather to protect pumps and pipes.

Sangamon tank, 6 miles from Springfield, takes water from Sangamon River; good supply, 2-inch iron pipe.

Mt. Pulaski tank, 23 miles from Springfield, takes water from a well; good supply.

Gravel Pit tank, 38 miles from Springfield, takes water from West Salt Creek; good supply.

Clinton tank, 44 miles from Springfield, has failed once for a day; supplied from a well 19 ft. deep and 15 ft. diam.

East Salt Creek tank, 50 miles from S.; good supply from creek.

Weedman tank, 65 miles from S., supplied from a well; good supply.

Gibson tank, 82 miles from S., supplied from East Sangamon R.; good supply.

Beset tank, 100 miles from S., supplied by an artificial pond; has failed once.

At Gilman, 111 miles from S., water is had from Ills. Cen. crane. The pipe for all the water tanks is of iron 2 in. diameter.

Road and track.—About 25 miles of the road is fenced and ma-
196 terial for nearly as much more fence is being distributed. The track is laid with 50 lb. iron fish joint, "three-quarter spiked," and only a small proportion of the iron shows much wear; is tolerably smooth, and considering the unprecedented continued wet season is in good condition, better than the roads in this State average. The favorable state of the track is partially owing to the limited number of trains passing over the road, as the road is ballasted with native prairie soil only. The few culverts that suffered by the recent high water have been fully repaired, except one, which is in a forward state of completion.

Sangamon bridge.—The bridge over Sangamon River is a Howe truss, 150 ft. span; north end rests on a good stone abutment; the south end rests on piles, as also does the trestle approach to the bridge. The recent flood in the river carried the current of the stream directly under the south end of the bridge, washing the earth from the piles and allowing this end of the bridge to settle down stream from 5 to 6 inches,
197 and also washed a few piles away from the end of the trestle next to the bridge. The trestle and bridge have been temporarily strengthened, but as the earth has been washed away to the depth of about 15 ft. nearly to bed rock, a stone abutment should be substituted for the pile foundation, otherwise the bridge and trestle are in good condition.

Iron.—Should think 300 tons new rails, 200 tons between Springfield and Clinton, and 100 tons between Clinton and Gilman, will replace all the bruised iron that should come out this fall.

Ties.—The ties are in ordinarily good condition except between Belleflower and Gilman, a stretch of 38 miles of hemlock ties, which are decaying fast. Balance of road has oak ties, generally under size. Would recommend ten thousand new ties between Springfield and Belleflower, and from ten to fifteen hundred new ties to the mile between Belleflower and Gilman during this fall. I understand there are nearly one hundred tons of new iron, and quite a quantity of ties delivered and
198 on hand; which will be found in Mr. Jeffrey's report of personal property.

The telegraph line is in good order, being a No. 9 galvanized wire supported on 30 cedar poles to the mile, extending the length of the road, Springfield to Gilman. The telegraph instruments are owned by W. U. Co., which has leased the commercial business of the line for one-half of the gross receipts.

(Indorsed:) Filed July 15th, A. D. 1876. J. A. Jones, clerk.

Testimony of T. J. Hudson.

T. J. HUDSON, first being duly sworn, on oath deposes and says:

1. What is your name, age, residence and occupation?

T. J. Hudson; age, 28 years; am superintendent Gilman, Clinton and Springfield R. R. Co.

2. How long have you been engaged in railroading?

199 Some 12 or 13 years.

3. What connection have you had with the G., C. & S. R. R.?

I have been local, freight and ticket agent, general ticket agent, general freight agent, and now am general freight agent and superintendent.

4. How long have you been connected with that road?

Since the opening of the line continuously.

5. What position had you at the time Mr. Hinckley took possession as receiver?

General freight and ticket agent.

6. What position did you occupy during the time he managed the road as receiver?

General freight agent.

7. State time, the time as nearly as you can, when Mr. Hinckley took possession and when he delivered possession to Mr. Seyton.

He took possession Nov. 26th, 1873, and delivered possession to Mr. Seyton 28th August, 1875.

8. What portion of time did Mr. Hinckley spend on this road
200 during the time he was acting as receiver; what number of days per month, as near as you can tell?

I should say about four days per month.

9. What did he do during those four days?

Made an examination of the accounts, signed vouchers, &c., and paid the monthly pay-roll.

10. Where was his office and general place of business during all the time he acted as receiver?

A. At Chicago.

11. What other railroads was he managing, and what other business was he during all the time he was acting as receiver, if you know personally, or from what he told you?

I do not remember having any special conversation with him on that subject, but my recollection is that part of the time he held the office of

president of the Chicago and Paducah R. R., and also pres. of the Chicago and Iowa, and Chicago, Pekin and Southwestern R. R.

201 12. You say part of the time he was president of the Chicago and Paducah R. R.; what relation to it had he the balance of the time?

I don't know that he held any office.

13. What portion of the time that he was receiver was he president of the Chicago and Paducah?

About one year.

14. Was he or not actively engaged in the management of all of these roads, during all the time he was acting as receiver of the G., C. & S. R. R.?

I think he was, excepting after he resigned the pres. of the Chicago and Paducah R. R.

15. Do you know anything about his being engaged in a large construction contract in Iowa during the time he was acting as receiver?

I have understood he was so engaged.

16. What officers had he in charge under him at the time he was acting as receiver on the G., C. & S.?

G. H. Conkling, superintendent; A. Pickard, auditor and general ticket agent; myself, general freight agent.

17. What salaries did each receive?

202 Cannot say, except I got $175.00 per month—$165 for some months, and then $175.

18. How often was he in the habit of visiting the road?

Once and sometimes twice a month.

19. How long would he ordinarily remain when he came?

Two days.

20. In what condition did he leave the road as compared with its condition when he received as to track, rolling-stock, and supplies?

There was not much construction or repair work done during his receivership, and, as a consequence, the road-bed and machinery was not in as good condition when he turned it over as when he received it.

21. In what condition was the road-bed and plant of the road when he took it?

In fair condition.

22. What amount of supplies were on hand when he took it?

I can't say.

203 23. State whether there was a fair amount of working supplies when he took it.

I can't say positively.

23. State whether the road was in a safe or unsafe condition to be operated when he turned it over to Seyton.

I do not think the road was in safe condition to run trains on fast time; the ties were in poor condition, especially on the north end of the line, and most of the time have switches been replaced.

24. How were the bridges and trestle work on the line at the time he turned the road over to Seyton?

They were needing repairs and were repaired immediately on Mr. Seyton getting possession.

25. Did you consider the bridges over the Sangamon and Salt Creek safe when they were turned over by him to Mr. Seyton?

I consider them hardly safe.

How much longer could the road have been run or managed by Mr. Hinckley without breaking to pieces or serious accident by running on

the schedules required by the road to make its connections, to do its proper business?

204 I do not think it could have been operated with safety for a much longer time; the ties and iron generally were in rather poor condition.

27. State whether or not the plant of the road had run down seriously during his administration. I mean by plant everything but the real estate.

Yes, sir.

28. In your judgment, would a proper amount of money expended in keeping the track and machinery in repair been judicious, and would it have saved money in the end to the property?

I think it would.

Cross examined by HINCKLEY:

X 1. What was your connection with any other road before your connection with the G., C. & S. R. R.?

Freight and ticket agent of the C. & A. R. Road for some seven years; also freight agent of the S. & I. C. for some time, in connection with the C. & A.

X 2. Are you a civil engineer, and have you ever had charge

205 of the construction of r'roads, or by your duty are obliged to keep in repair a railroad property to any considerable extent?

No, sir.

X 3. I will ask you if you do not know of the fact that prior to the removal of Mr. Hinckley, that purchases had been made of suitable materials and measures were then being perfected to put the road in better order?

Yes, sir; I think some movements were being made to that end.

X 4. Do you know whether or not there had not been about that time some 10,000 ties purchased for that purpose?

Yes, sir.

X 5. State if there had not been a freshet very damaging to this property a short time before the removal of Mr. Hinckley.

My recollection is there had been.

X 6. There had been no serious accidents or delays in business during his management, had there, on account of the condition of the track, except during the freshet?

No serious damage, but did not consider it safe to run the trains

206 at the rate of speed necessary to attend to our business.

X 7. Was there any change in the schedule time on account of the condition of the road during Hinckley's management?

I think not on account of the road-bed.

Direct ex. resumed:

Were there ever any such man employed by the Gilman, C. & S. R. R. under Mr. Hinckley as W. L. Ettinger, so far as you know; were there ever such man on the road?

Not that I am aware of, that ever worked on the line; but I understand there was a man by that name in Mr. Hinckley's office at Chicago, who, I think, did some work in the way of copying accounts, &c.

The 10,000 ties of which you spoke, were any of them delivered or paid for when Hinckley left?

I think not. They were not delivered.

207 Were not all purchases of supplies made by Hinckley during his receivership generally?

Yes, sir.

Did Mr. Hinckley personally approve all vouchers and bills for supplies?

Yes, sir.

Did not Mr. Hinckley approve vouchers of all kinds?

Yes, sir.

Who acted as paymaster?

Mr. Hinckley.

Did he not also act as general manager, and charge himself with the duties of that office?

Yes.

Did he not personally go over the road at least once a month and examine into its condition and affairs?

Yes, sir.

Do you not also know that he also attended to the business of the company in a measure while at his office in Chicago?

Yes, sir.

Was he not very frequently in communication with yourself and
208 other officers of the road concerning the business of the Co.?

Yes, sir; we had considerable correspondence.

Who was in charge of the road at any time when Mr. Hinckley was absent?

As sup't, D. H. Conklin had control of matters generally.

Wasn't he a competent superintendent?

I think he was.

Was it not generally true that all the appointees of Mr. Hinckley were men of experience and competent men for their places?

I think they were a fair average.

You seem to speak hesitatingly of some of these men; state who of them were not competent men for their places and attentive to their duties.

I do not consider there was any neglect, but did not think Mr. Pickard had had much experience in ticket business. He is the only one I would speak of.

State generally how Mr. Hinckley's management compared with that that preceded or followed it.

209 I think the road was well managed so far as the business was concerned; the general management was good, but the repairs were not kept up in ties, iron and machinery, as I think they should have been.

What is the measure of your experience in matters of that kind?

Mainly during the past year.

Direct examination:

I find Mr. Hinckley has paid to Samuel C. Smith over three hundred and fifty dollars. Did not Mr. Smith write up a new set of books owing to the incompetency of Mr. Pickard?

The books were rewritten by Smith and afterwards copied by Mr. Pickard. I understand the books were copied for the cause stated, but cannot say positively from my own personal knowledge that such is the fact.

T. J. HUDSON.

210 *Testimony of Edward T. Jeffrey.*

EDWARD T. JEFFREY, first being duly sworn, on oath says:

What is your name, age, residence and occupation?

Edward T. Jeffrey; age, 33 years; residence, Chicago; ass't sup't of

machinery Ills. C. R. R.; I am a practical mechanic. I have examined rolling stock and machinery of the G., C. & S. R. R. from Aug. 28 to Sept. 1st, 1875, inclusive; examined each locomotive, each passenger, baggage, mail and express car, and about ⅔ of the freight cars, all I could find on the line of the road at that time. I also examined the shops and tools at Clinton, took an inventory of all personal property of the Co., rolling stock, tools, machinery, ties, rails, spikes, and all materials on hand for repairs of road-bed and rolling stock. I found it in the following condition: Engine No. 1 needed lost motion taken up, fliers and tires needed turning.

In what condition generally did you find the machinery as to its state of repair?

211 In condition inferior to that required on first-class roads as to engines and cars.

Was or was not the machinery in proper condition then to do the work on that line?

It was in safe condition as far as I could ascertain for doing the business on the line, but not in a proper condition for the economical transaction of business of the Co.

State whether or not it was in a condition to rapidly deteriorate in value if used in that condition.

Yes; if used in the condition in which I found it, and would deteriorate more rapidly than if in first-class order.

State whether or not in your judgment the machinery had had the proper amount of repairs for the year and a half previously to enable it to do the proper amount of *repairs.*

I would say it had not.

Q. State, Mr. Jeffreys, whether or not in your opinion the machinery had been seriously damaged for want of the proper amount of repairs; and if so, to what extent.

A. It would be difficult for me to answer that question as to
212 the amount—as to the extent—without putting it into dollars and cents, and I would respectfully submit that before doing that it would be necessary for me to make some estimates.

Q. You may state whether or not it required more expense to put it in a good working condition than it would have required to have kept it in that condition by proper expenditure at the proper time.

A. That is my experience in railroad machinery. The result of my experience in the repairing of it has convinced me it is more economical to repair the rolling-stock as the repairs are needed than to delay them for any length of time at all.

Q. Well, would you say then that the road had been managed economically or not for the past year or year and a half after the condition which you found the machinery?

A. I should say that as far as the expenditure of labor and material in the repairs of the rolling-stock were concerned that they had
213 been very small, too small to keep up the rolling-stock in condition in which it should be kept, and, of course, necessitated, or would necessitate at some future time, a heavier expenditure in the repairs of the rolling-stock, engines, and cars.

Q. Would you call that an economical administration or a bad administration of the property, getting it in that condition?

A. I should say if a railroad manager had the funds at his disposal that is not a proper way to manage the machinery department of the railroad, but there may be other circumstances, for aught I know, that would modify the plans of the manager in the case of that kind.

Q. In what condition did you find the passenger-cars as to their appearance?

A. They were in a very poor condition, sir. They were in safe running order, but a very poor condition.

Q. Describe their condition briefly; their appearance, etc.

A. The trucks and running-gear of the passenger-cars—in
214 speaking of passenger-cars I mean all cars running in passenger trains—the trucks and running-gears of these cars were all in very good condition, perfectly safe. The bodies of the car were about five years old, but the paint was in a very bad condition. The cars needed repainting and revarnishing. The upholstery in the cars was in some, of course, worn with having been five years in use, and of course needed cleaning thoroughly. The insides of the cars looked very dingy, and all required what we term general repairs in order to make them fit to do a respectable passenger business.

Q. Were they in a condition to compete with passenger business on a first-class line, such as the Alton Road running from Springfield to Chicago?

A. I should say they were not.

Q. How did you find the wheels of the freight cars; what condition?

A. I estimated that in order to put the freight-cars in proper running condition from 140 to 150 new wheels were necessary besides what were on hand.

215 Q. How did you find the shops; what condition?

A. I found the shop, machines, and tools of an excellent manufacture and in good condition. The buildings had—I understand you to include the buildings?

Q. Yes; all.

A. The engine-house had been partially blown down by a storm some time previous to my examination of the road, and the part that had been damaged had not been rebuilt. There were three stalls remaining and the roof of it; the slate roof needed considerable repairing. The roof of the machine-shop also needed considerable repairing, so also did the roof of the blacksmith-shop, all of them being slate roofs; but the buildings otherwise were in very good shape.

Q. What amount of supplies did you find for repairs on the property?

A. I found a very small stock of supplies.

Q. Did you make an estimate of the amount of expenditures
216 that would be necessary to the machinery to put it in proper condition?

A. I did not at that time, sir, in dollars and cents. I simply estimated or stated what work was necessary to do on the different engines and on the cars, but didn't put it in dollars and cents.

Q. Could you now give an approximate estimate from your examination of the amount of money it would take to put the road in such repair as in your judgment it ought to be put in?

A. No; I couldn't just now without looking over my notes carefully, and estimating in regard to each engine, passenger-cars, baggage-cars, and a general estimate of the freight cars, which I prefer not to do without I carefully look into the matter.

Q. In the employ of what company are you now?

A. The Illinois Central Railroad Company, sir.

Q. How long have you been in the employ of the company?

217 A. It is 19 years last November since I first went to work for the company.

Q. What length of road does it operate?

A. About 1,108 miles of road.

Q. Do you know the salary paid to the general manager of that company, James C. Clark?

A. Not of my personal knowledge. I have been informed it is twelve thousand a year.

Q. Do you know the salary paid to his general superintendent, Mr. Tucker?

A. Not from my own personal knowledge, but I have been informed it is $6.000.00.

Q. Well, you may state whether these gentlemen give their entire attention and tend the operations of this road and the management of the property.

A. So far as I know, they do, sir; and they have their hands full, too.

Cross-examination by Mr. HINCKLEY:

Q. In comparing this road with others, you compare it with a first-class road, do you?

A. Yes, sir; I take the standard, of course, of a first-class road.

218 Q. Do you think it necessary that a branch road like this should be kept in the same condition of a road that does a through business?

A. I think that engines and cars should be kept in good condition at all times, so far as possible.

Q. In the same condition on a branch road as on a main line?

A. Yes, sir. I think, so far as the engines and tracks are concerned, that they should be kept in as good condition as on the main line; but for passenger cars it is probably not necessary to have so high a priced car, or to keep them in such first-class condition as is requisite where there is very heavy transfer.

Q. Hence you think these passenger cars are in good condition to do business?

A. Simply to do business safely. I should say they were not in condition to do a fair passenger business. If I were a passenger, the way the cars looked to me, I should prefer to ride on some other road having a better car than I saw there. That is the way I feel about it.

219 Q. State whether this road had suitable shops for repairing passenger coaches and painting them.

A. No, sir. The Gilman, Clinton & Springfield Road did not have suitable facilities for repairing cars. My impression is that they have a carpenter shop at Springfield which is not large enough to admit a passenger car, but of that I will not be positive.

Q. At Clinton you mean?

A. Yes, sir. I wish to change that; at Clinton. The car shop there is 37½ feet wide and 58 feet long, but whether the doors are wide enough to let in a passenger car or not I can't say. I thought they were not. In that case, of course, it would be difficult for them to repair or re-varnish their cars, although it could be done by other roads.

Q. State how many passenger coaches there were on the road.

A. At that time there were three passenger coaches that were running on passenger trains—one car, passenger car; three having been destroyed by fire in the summer of 1873, so I was told.

220 Q. State whether the trains that were running on the road could have been run and still spare any of the cars to go to any other road for repairs.

A. Well, I think they could & ought to have been spared to go to the

other roads for repairs, even if it had been necessary to rent the cars from other roads for that purpose, in the condition in which they were.

Q. Your criticism on passenger coaches is simply as to the painting and cleanliness of the car?

A. Yes, sir; the general condition of the cars. As I stated before, these cars are in safe running condition. I examined the trucks critically, because, from the appearance of the cars, I felt perhaps that they were not in safe running order, but I found they were in perfectly safe running order, but in bad condition.

Q. Do you think it would cost proportionately more to paint the cars at the time you saw them than it would have done to paint them 3 months before?

221 A. No, sir; I don't think three months would have made any difference.

Q. Or 6 months?

A. Yes, sir; I suppose it would cost some more. I think the general opinion among most mechanics is that if cars, when they are once painted, are taken in once or twice a year and revarnished and cleaned down, that the paint lasts longer, and it is more economical in the long run than if managed in any other way. If they are allowed to run two or three years, you have to repaint & revarnish the cars, and perhaps may have to be torn down.

Q. Is it true that they have to be torn down?

A. My recollection is that one was.

Q. Was it that one of the old cars not worth repainting?

A. I can't say at the present time.

Q. I will ask you to state whether, in your judgment, cars made by the company operating the road are better than cars made by a manufacturer who manufactures cars to sell.

A. I think invariably they are.

222 Q. I will ask you to state whether these cars were made by the road or by the manufacturer.

A. My recollection is that the cars, the freight cars, were made by the Jeffersonville Car Works, the Ohio Falls Car Company, by Mr. Shaw & Company, of York, Pennsylvania, and by some other firm I don't remember the name of. The passenger cars were made by the Ohio Falls Car Company.

Q. Where any of these cars even first class cars?

A. The coal cars, I think, numbered up to 60—50 or 60—very good coal cars, and the box cars & stock cars were built by the Ohio Falls Car Company, and are good cars as compared with those built by other manufacturers. Those cars owned by that company marked circle "N" and built in York, Pennsylvania, M. Shaw & Company, and those from the firm whose name I forget, are not so well constructed.

Q. Poorly constructed cars?

A. I should call them poorly constructed cars?

223 Q. You would call all the cars poorly constructed cars as compared with the Illinois Central cars?

A. Yes, sir; all the freight cars.

Q. Does it not require more expenditure to keep up a car of that construction that one properly constructed in the first place?

A. Yes, sir.

Q. Do you know if there had been any new wheels put into these cars for the last six months prior to the time you saw them?

A. I don't know of my own personal knowledge.

Q. You stated a moment ago that the freight cars were inferior to the

Illinois Central; were the passenger cars equal to those of the Illinois Central?

A. The construction, you mean, or the condition?

Q. The construction?

A. The construction of the passenger cars is equal to quite a number we have on the road.

Q. That is, equal to some of your old smoking cars?

A. No; they are equal to some of our passenger cars, sir. They
224 are not equal to the cars we build iron—the passenger cars that are constructing and building now.

Q. I will ask you, Mr. Jeffrey, if you didn't find these cars equal to the condition of cars on the average branch road through the country or the average road that does its own repairs?

A. No; I think that, so far as the condition of the cars—the freight and passenger cars after examination—I think they were inferior in condition to the average condition of the other roads.

Q. State wherein they were inferior in condition—the freight cars.

A. The roof boards of all the (N) cars were originally, I think, double board roofs on the box cars; and the heat from the sun had warped these boards and drawn the nails out and loosened them so I could pick them out with my fingers, causing, to some extent, I think, leaky roofs, which is liable to damage merchandise; and the roof boards on the (N) stock cars, which have a simple single board roof, and the racks of the (N) stock cars were not securely made, not strongly built, and
225 became quite loose; but of all the freight cars the wheels, as I said before, were in rather a bad condition, and there was needed from one hundred and forty to one hundred and fifty new wheels.

Q. Your criticism of the condition of the cars applies more to the construction of the cars, and the fact of their being loose and the imperfect condition of the roofs, and to the manner in which they are made, more than to neglect?

A. No, sir; my criticism applies to the condition in which I found them.

Q. Wasn't the condition caused by their imperfect condition, largely?

A. To some extent. All the Jeffersonville cars, I would mention, and the Ohio Falls cars I found had double boarded roofs screwed on in very good shape as compared with the others, and the Ohio Falls stock cars, I should think, also were better constructed stock cars than the others I have described. But all of the cars, that is, the average of them right through, needed more or less repairs.

Q. I would like to enquire it that is not the case on all roads,
226 that there are always repairs necessary?

A. Yes, sir; invariably. We never have all the cars in good shape at once, but some roads require a good deal more than others.

Q. This would require more from the fact of the cars being inferior in construction.

A. That would be one reason; another reason would be because the proper repairs were not made.

Q. You say the nails were out of the roof, would it cost more to drive a nail at the time you saw them than it would a few months earlier?

A. When I saw the cars the roof boards were warped. They were bent up at the edges and in a great many cases if they had been nailed down or screwed down the roof boards would have split.

Q. How should they have been put on originally?

A. With screws.

Q. The screws would have to hold them down if they had been put in at the time you saw them?

A. As I said, if they had been put in and the roof boards
227 would have been split at the time I saw them. They had curved with the heat of the sun.

Q. Isn't the condition of the boards *reverse* in a hot day than in a moist one?

A. Well, I presume it may be some worse. I presume, though, if a board has once taken that shape it stays there; that is my opinion. But however these boards were put on in the first place, then when they commenced to get loose they should be nailed down, screwed down, fastened securely. It was also my opinion that the springs were most too solid. They put in originally the Empire spring, which is an inferior spring, and it is injurious to allow it to remain in the cars because it is too solid, and it has not elasticity enough to it.

Q. You spoke of making a recent estimate of the cost of repairing that machinery; what was the amount necessary to put it in good condition?

A. The estimate for the engines was $6,000.00 to put them in good condition, and the estimate on the cars $10,000.00 to put them in good condition.

228 Q. That estimate is made within the last 60 days?

A. Yes, sir; within the last 60 days, I believe.

Q. Had the cars been materially repaired between the time you saw them 1st of August, 1875, and the time you saw them recently?

A. A great many new wheels were put in. I found them in a greatly better condition, and the brasses were in a better condition.

Q. These are things you constantly do in keeping a road up?

A. They ought to be done, although they may not always be done; but I found the condition of the wheels and the brasses materially improved, and I think, too, in fact I know from observation, there had been a good deal of work done on the cars and passenger-cars. I wish to state they had all general repairs. The baggage-cars had general repairs, and when I examined them in the last 60 days, were in first class condition for that class of car.

229 Redirect examination by Mr. WILLIAMS:

Q. If those were not very good cars they needed more careful superintendence to keep them in repair, didn't they, and all the time needed closer watching?

A. I expect it will hold good that any machine or anything else poorly constructed requires more constant care than if well built.

Q. So that a machine not being as good as it ought to have been, was in reason for neglecting it—rather a reason for taking additional care of it?

A. Yes, sir; I think machinery or any property of any value should be kept in order, as I have before stated.

Q. When you had last examined the machinery, hadn't the almost entire machinery of the road undergone considerable repairs, both their passenger-cars & all classes of cars?

A. Yes, sir; I think they had undergone considerable repairs; my present recollection of the matter is that, with the exception of
230 the engines, all had had repairs or were having them at the time of my last examination. One of the three engines I speak of had general repairs by the Illinois Central Railroad Company, perhaps fourteen or fifteen months ago.

Q. Didn't Mr. Seton, after taking possession, to your knowledge send these passenger-cars up to the Illinois Central shops and have them repainted and fixed up in a decent condition?

A. He did, sir. I recommended that in my report or in a conversation.

Q. Had Mr. Hinckley had that done at any time that you went out?

A. So far as I am concerned, of course, I should say no; whether Mr. Hinckley could make that arrangement with the officers of our road I could not say. That would be a matter between Mr. Hinckley and them.

Recross-examination by Mr. HINCKLEY:

Q. Are the facilities at the shop sufficient to do general repairs economically for a first-class road?

A. Do you mean locomotives or cars?

Q. Locomotives.

231 A. No; I should say the facilities were not such as would enable you to do general repairs to a locomotive economically, for this reason, that there are no tools there for doing boiler work, and heavy boiler repairs couldn't be done there without additional facilities there for doing the work, and it wants a large driving wheel laid for turning off tires for driving wheels, or they could be shipped off to a neighboring road's workshop to be done, as has been done frequently on the same road.

Q. Do you know at any time prior to your examination in August, 1875, of any of the locomotives being sent to other roads for general repairs?

A. Yes, sir; engine No. 8, I remember, was sent to our shops in Chicago for general repairs and to receive a new furnace.

Q. It was in good condition when you examined it at this time?

A. Yes, sir; that is, when I examined it in August, 1875. The engine would probably need new tires within a year.

Q. Some allusion was made to the officers of the Illinois Cen-

232 tral. I would like to ask you how often Mr. Douglas goes over the Illinois Central Road?

A. It is really hard for me to answer that question. I have known of his going down to Cairo twice or three times in the last two or three months.

Q. He was going through to the South, was he not?

A. Yes, sir; of course, occupying the position I do, it is next to impossible for me to know the movement of the president of the road.

Q. How often does Mr. Clark make a general tour of the road?

A. I should think Mr. Clark would be on the road very nearly half of his time, from one-third to one-half of his time; nearly, probably, about one-half. He is on the road more than any general manager I know of.

Q. How often does Mr. Tucker go over the road, general superintendent?

A. I should think, probably, once a month.

Q. Over the whole line?

A. Yes, sir; I should think about that; but I wish to here state

233 that these gentlemen may make trips over the road when I am away out of town about other business, and when I do not know anything about it. It is simply a mere guess to the best of my ability, that is all. I would like that so understood.

Q. Do you know as to Mr. Tucker, whether he goes over the road once a month?

A. I should think he would average very nearly that.

Q. The whole line?

A. Well, I can't answer that question, whether the whole line or not. I say I go over a road about once a month, but I may probably skip a 150 or 200 miles of it. There are some parts of our road, probably, that I have not been over for 6 months, but then I don't consider it of the smallest importance that I should go there.

Q. What distance from Chicago is the furthest point on your line?

A. Sioux City.

Q. What distance is it from Chicago?

A. 527 miles, I think.

Q. Do the officers of your road manage that line and have their offices in Chicago?

234 A. Yes, sir.

Q. Do you regard Chicago as the proper place for the office of the manager of a line doing business in Chicago?

A. Yes, sir.

Redirect examination by Mr. WILLIAMS:

Q. Would you consider Chicago a proper place for a man to live and manage the Gilman Road?

A. I should prefer not to answer that question, for the simple reason that I know nothing, comparatively nothing, of the business of the Gilman, Clinton & Springfield Railroad, and the condition of the road.

Q. How far is Gilman?

A. 81 miles.

Q. Would you think it a proper place for a general manager of the road to be 81 miles from any point of the road at all, and go and see it once a month, and never see it at all more than once a month, and then only a day or two at a time?

A. I think an efficient manager that had a good organization
235 under him should be able to manage a road like the Gilman, Springfield and Clinton road by visiting it two or three times a month, and spending a day or two or three days there each time, provided he has an efficient management under him in direct operation of the road.

Q. You spoke of first-class roads; what roads do you mean when you speak of first-class roads?

A. Well, without being egotistical I should say the Illinois Central, the Chicago, Bloomington and Quincy, Chicago & Northwestern, Chicago & Alton, and similar roads running out of Chicago.

Mr. MCCONNELL:

Q. I want to ask you if such a railway as the Gilman, Clinton and Springfield Railroad is, having connection with Chicago and doing a first-class business, a general business over the Illinois Central Railroad into the city of Chicago, if Chicago would not be a more general & eligible place for a general manager than any town along the road?

A. Well, sir, I could scarcely answer that question understanding' without knowing of course the business relations of the railroad. I don't know anything at all about the business relations.

236 Mr. WILLIAMS:

A. You don't pretend to know anything about the operations of a road outside of keeping its machinery in repair, do you? You never had the management of a road otherwise than in connection with the machinery?

A. No, sir; not outside of the machinery proper.

Q. Your business is to keep the machinery in repair; superintend it, and keep it in repair?

A. Yes, sir; my business is to assist our department, which comprises keeping the engines and cars in proper condition, and keeping the men employed for that purpose, and the shops in which they work, and the engine's and firemen who run the locomotives.

Mr. McCONNELL:

Q. All your conclusions and opinions to the proper condition in which the road should be kept are given without any reference or any particular limitation as to the amount of money that might be in the hands of the managers employing you in this way. This is not the fact
237 that he may be limited in his financial matters you do not take into consideration in making their estimates?

A. No; my judgment in these matters—my opinions that I have expressed here are given, of course, as to what as a mechanic I consider essential.

Q. I' could have been done, & ought to have been done, if there was plenty of money to do it with?

A. Yes, sir. So far as the financial part of it is concerned I have nothing to do with it, and am not supposed to know anything about it.

Testimony of T. J. Nicholl.

T. J. NICHOLL, a witness called on behalf of the complainant, was duly sworn, and testified as follows:

Direct examination by Mr. WILLIAMS:

Q. What is your age, Mr. Nicholl?

A. 30 years.

Q. What is your occupation?

A. Civil engineer.

Q. How long have you been engaged in that business?

A. In the neighborhood of eight years.

Q. In what capacity?

238 A. Well, in every capacity, from rodman, chainman, assistant engineer, & chief engineer.

Q. You have been engaged in building railroads?

A. Yes, sir.

Q. And in their operation?

A. Yes, sir.

Q. What is your business now?

A. At present, engineer and roadmaster of the Gilman, Clinton and Springfield Railroad.

Q. How long have you been on that railroad?

A. Since October, 1875.

Q. Did you examine into the machinery and track of the road when you first came on it to find out its condition?

A. Yes, sir; more particularly as to the track.

Q. Describe what condition you found the track when you first examined it.

A. I found that the track needed considerable more repairs, and found it under repairs.

Q. What repairs had been recently done on it that was then in progress?

A. The surfacing and putting in new iron, new ties, repairs of bridges, and so on.

Q. State whether any considerable amount of repairs had been done recently.

A. Yes, sir; there appeared to be.

Q. To what extent?

239 A. Well, I should think, possibly, I should say there was 10,000 ties put in.

Q. What amount of iron & steel?

A. In the neighborhood of a 100 tons.

Q. What other repairs?

A. Two trusses on the road; one was in process of putting in; new castings, and some new timbers.

Q. Were those repairs already done? What condition was the road in as to a safe condition to be used or not when you went there?

A. The road, at the time, I said, was not safe.

Q. For what reason?

Mr. HINCKLEY:

What time did you go there?

A. 20th of October, 1875.

Mr. WILLIAMS:

Q. For what reason?

A. For the reason that in many places of it the joints were down and it was out of line, and it required a general surfacing, a general raising of the track, as the track-men call it, and it required a great number of new ties through the entire length of the road, more particularly on the north end—the north 35 miles.

240 Q. What condition was that north 35 miles in?

A. Well, sir, it required fully three-fourths of the ties renewed.

Q. What condition were the old ties in?

A. Very rotten, and in many places as many as 5 and 6 together and as high as ten, I believe, I have counted.

Q. Was it safe to operate the track in that condition?

A. No, sir, it was not, only at a very low rate of speed.

Q. How was the trestle-work & bridges?

A. The trestle-work and bridges required repairs—considerable repairs. The timbers in many cases were very rotten.

Q. How had that tract been treated in the last year or 18 months before that—before these recent repairs had been commenced? Had it been neglected or not?

A. I should judge it had been.

Q. Had it had such an amount of repairs as ordinary prudence would require to be given to the property?

A. I think not, sir. Of course, it is only a matter of judgment, that is all.

Q. How about the machinery; what condition did you find it in—the rolling-stock?

241 A. As far as the machinery is concerned I didn't make such a thorough examination. There was at least one of the engines appeared to be in a pretty poor condition, part of it.

Q. You may state whether the cars have been overhauled to any extent before you went on the road.

A. I suppose there were one car, one passenger-coach, if I mistake not.

Q. How about the trucks under the freight-cars, had they been replaced to any extent recently before you were there?

A. I should judge not, very.

Q. What condition did you find them in?

A. In the passenger-cars particularly—the (N) cars—they have a very poor spring under them, so that nearly all of them are broken down so that the two parts of the spring come together so it is almost perfectly solid. A great many of the wheels appear to be very badly worn, and new ones required.

Q. What is the effect of a neglect to keep property of that kind in an ordinary state of repair? What effect has it as to deteriorating more rapidly, and as to the ultimate expense of putting it in good condition and keeping it that way?

242 A. I should say the proportion was very great. Machinery that is once badly out of order must certainly deteriorate much faster.

Q. How about the expense of putting it into repair? Is it much greater than to keep it in repair or to let it run down badly and put it into repair? How is that? Does it take more money than to keep it in reasonable repair?

A. Undoubtedly it does.

Q. What would you say of the management of this property for 21 months, whether it had been prudently or economically managed or not from the repair you saw it in?

A. I can hardly answer that question, but my impression was when I saw the road that it had been very badly managed.

Q. Was the road badly run down or not?

A. Yes, sir; it was, or appeared to be, in very poor condition, indeed. For instance, the ties not having received proper renewals had allowed the irons to be worn more than necessary. A great deal of the iron would have *have* lasted much longer if they had a proper renewal of the ties, and it not being kept in proper surface, the irons, of course,

243 was kinked a good deal.

Q. What effect would that have upon the machinery of the road?

A. A very severe effect.

Q. What effect?

A. A bad effect to the engines coming over the road. The jars would cause more loss of motion in the machinery.

Q. What time of the year is it proper to put a track in repair to get it line and renew the ties?

A. They generally begin renewing the ties about the middle of April. About the beginning of May most roads begin raising their track throughout.

Q. What condition ought it to be in in the last of August?

A. A good condition at that time of the year, repairing for the winter. It is not considered safe to touch a track after September.

Q. The repairs to the track ought to be done in September?

A. By the end of September an'way.

Q. You may state briefly what repairs have been made since you have been on the road generally as to the rolling stock to get it in decent running condition?

244 A. Since I have been on the road the track have received in the neighborhood of 600 tons of iron. It has received about 50,000 ties, that to 55,000, and we have been under the necessity of keeping on a construction train almost during the whole time putting in material in places requiring material for surfacing and so on. The bridges I believe have all received more or less repairs, particularly the Howe truss

bridges; they have both received new castings—14 new castings in each bridge—and have also received several pieces of cord timbers. The Salt Creek bridge have 26 new cills put into it, I believe, and a proportionate amount of repairs throughout. The restraining beams have all been raised to their proper place. There has been in the neighborhood of 20,000 feet of lumber put into the bridge work.

Q. Well, the machinery, the Sangamon bridge and trestle work?

A. The Sangamon trestle has received new stringers throughout and several new vents and sway braces put on. The Sangamon bridge has received 40 car-loads of stone. It was necessary to make that safe, as the bridge has been moved slightly down the stream about 6
245 inches out of line, I think.

Q. What was the general character of the repairs of the machinery, rolling machinery?

A. That I cannot say precisely; I can tell you the exact number of wheels or anything of that sort. I know they have all had recently repairs.

Q. The passenger cars?

A. Two of the passenger cars and two of the baggage cars had been cleaned and repainted and varnished since I have been there.

Q. Take a road in the condition it must have been in the last of August or the first of September before you went there, before the repairs that have been recently put there were made, was the road in a condition to have been operated that winter?

A. No, sir; it was not.

Q. How long could it have been run in that condition in which it must have been in?

A. I should say not very ; I should not have liked to run it. I would like to have stopped right then.

Q. You think it would have broken to pieces?

246 A. I would. I don't think it would run through the winter. I know it would not.

Q. When have these heavy repairs you speak of been made; what season of the year?

A. I should say they must have begun early in September, and they had to be made during the whole of the winter months.

Q. Did that involve a larger outlay than if it had been done in the proper season?

A. You can't make the same material; in the way of surfaces, for instance, you can't do the same work if it had been done at the proper time of the year, although that season was more favorable to that sort of work than it ordinarily is.

Q. In the ordinary fall that we have in this country would it not involve a large, a greater outlay to put that road in proper repair then than at the proper season?

A. Yes, sir; in fact it would have been almost impossible to have done it.

Q. Providence favored you in the season?

A. Yes, sir.

Cross-examination by Mr. HINCKLEY:

247 Q. I don't quite understand your position on the road.

A. Engineer and road master.

Q. Have you ever acted as road master before?

A. No, sir.

Q. This is your first experience with repairs of the track?

A. Yes, sir.
Q. How often did you go over the track?
A. Once a week.
Q. On foot or on the train?
A. Sometimes on foot, sometimes on the train, and sometimes on a hand car.
Q. In your judgment, how long would it take if you went over it vigorously to put in 600 tons of new iron into a track?
A. Well, if you want to work at it with a large enough force it could be put in 10 days, probably.
Q. Then your statement that it couldn't be done in the months of September, October, and November is exaggerated a little?
A. Well, it couldn't be done without an extra amount of labor.
Q. Let us see; how many sections have you in that line?
A. 18.
248 Q. 600 tons would be 33 tons to the section; how long would it take a section man to put in 33 tons?
A. Well, they had to put it in a piece here and a piece there; it would take them, probably, if they did nothing else but put in these pieces of iron, they might, perhaps, get through in a month.
Q. Then the repairs could all have been made in the month of September?
A. Probably, so far as the iron was concerned.
Q. The ties; couldn't the same thing be done with the ties?
A. I should doubt that very much. I don't think that they could put in 50,000 ties in three months.
Q. These ties were mostly put in on the north end, were they?
A. Yes, sir; a large portion of them was put in in the north end.
Q. How many men have you to a section?
A. We have had from 5 to 8 men, never lower than five, and in a great many cases over 8.
Q. How long does it take one of these sections to put in a 100 ties?
A. Well, sir, sometimes they have put in 100 ties in a couple of
249 days, and sometimes it took them longer.
Q. They can put in ties much more rapidly if they put in 8 or 10 under a couple of rails than to put in one in a place?
A. Yes, sir.
Q. These replacements of ties were done more economically than if done at a time?
A. No, sir; I think not. I don't think if the ties has been renewed as they; you mean as regards the labor?
Q. Yes.
A. Of course, if all the ties had been renewed at once they could have been in cheaper than one here and one there.
Q. Then there is no obstacle in the way of making these repairs in the month of September & October?
A. Yes, sir; there is at least in October. The heavy rains make it so muddy that you can't put in ties.
Q. Was that the case in 1875?
A. It happened not to be.
Q. Then there was no detriment in the fact that the repairs hadn't been done?
A. Yes, sir; there was, because the material was all loosened up a great deal too late in the season, and the consequence was when
250 the rain came it washed out much faster than it would otherwise; it should have time to settle before the rain came.

Q. You think that is true before November?

A. Yes, sir; I think the track—I think it is generally the experience with road men that they don't like to touch their tracks after September.

Q. I think you stated you had no experience as road master?

A. Only what I have had on this road, and my observation of other roads. I have made it a study.

Q. What proportion of this 111 miles of track had not been surfaced?

A. Well, sir, there was very little of the track in good order. There was a little here and there.

Q. What proportion of the track had not been surfaced?

A. What portion of it?

Q. How many miles of the line had never been surfaced?

A. Oh, I suppose it had all been surfaced at some time or other; I should think any way it hadn't been done that season.

251 Q. Is it customary to surface a road every season?

A. Not to give it a general raising; it is customary to get up low joints.

Q. Yes, sir; but you don't seem to understand the difference between raising and surfacing; you mix your terms.

A. What we call surfacing is getting the low joints up to a proper surface. In raising the track we raise *we raise* the whole track, ties and all, and renew the material and put in a certain amount of earth under the ties.

Q. When you speak of surfacing?

A. When I speak of surfacing I mean raising the low joints and getting the track in surface and line also at the same time.

Q. You spoke a moment ago—said that in consequence of the track being out of line that it jarred the machinery; don't you mean out of surface?

A. I mean out of surface or out of line either.

Q. Do you think it jars machinery just as much as ir the track is out of line as if out of surface?

A. I think so, sir. May not be exactly in the same way, but
252 I look upon it just as greater to have the track badly out of line as to have it badly out of surface.

Q. What are those castings you spoke of in Salt Creek bridge; you say 14 of them you think were renewed. What do these castings cost apiece?

A. I really couldn't tell you the exact figures.

Q. What do they weigh?

A. The castings would weigh I should think probably 125 pounds.

Q. Worth about how much per pound?

A. I should say about 3 cents.

Q. And then 40 or 50 dollars would have paid for the renewal?

A. It might have paid for the castings; it would not have paid for putting them in. There was considerable difficulty attached to putting in these castings. The bridges are all got to be loosened and trussel-work put under it to preserve the camber of the bridge.

Q. Do you say it is necessary to put trustle-work under it to take out a main brace?

253 A. Yes, sir, to put it in properly; if you don't you are liable the camber of your bridge.

Q. Can't you put camber in afterwards?

A. You could do it, but it is a very expensive way to do.

Q. What is the difficulty while the camber is out while you are putting in?

A. The difficulty is the chance of your bridge going down.

Q. By simply taking out a main brace?

A. Well, it would not certainly be safe to run over with a main brace out.

Q. Isn't it practical to take out a brace and put in an angle block?

A. It might perhaps be done so, but I should not think. I should think it was rather a risky piece of business to run over any bridge with a main brace out.

Q. As a matter of fact, in changing this, did you put trestle-work under it?

A. Yes, sir.

Testimony of R. P. Morgan.

R. P. MORGAN, JR., a witness called on behalf of the complainant, was duly sworn, & testified as follows:

Direct examination by Mr. WILLIAMS:

254 Q. What is your name?

A. R. P. Morgan, jr.

Q. What is your age?

A. 47.

Q. What is your occupation?

A. Civil engineer.

Q. How long have you followed that occupation?

A. Well, most of the time about 30 years.

Q. Was your father an engineer before you?

A. Yes, sir.

Q. State briefly your experience in building & operating railroads in a brief way.

A. I commenced the practice of engineering on the canal and then I went on the Hudson River Railroad, where I was engaged about seven years in the construction of that road.

Q. Which road?

A. The Hudson River Road; after that I came to Illinois and acted as assistant engineer to Mr. Lee in the construction of the Alton road, and had charge of the construction of 60 miles of that road extending 30 miles south of Bloomington and 30 miles north. After the con-

255 struction of the road, I operated it a little over two years as general superintendent, and I have been engaged in making surveys for several lines of railways, and I built a road from Bloomington to the State line. For a little over two years I was railroad commissioner. The subject is one which occupies my mind most of the time.

Q. Are you acquainted with the Gilman, Clinton & Springfield Railroad?

A. Yes, sir; somewhat.

Q. Have you been over it?

A. Yes, sir; several times.

Q. Was your name used in any way in connection with the receivership when the receiver was appointed?

A. Yes, sir; I was appointed joint receiver with Mr. Hinckley.

Q. Well, you may state whether you declined to act; and if so, why.

A. I did. There were several reasons why I declined. Mr. Hinckley telegraphed me to meet him in Bloomington. He was coming from

Chicago by special train to see Judge Tipton with a view to taking possession of the road. I had a conference with him, and the
256 result of that was that I became satisfied that I had better not participate in the receivership. I talked with Mr. Hinckley a little abou t compensation, and I think I expressed the opinion to him that I did not think the road was long enough or important enough two such good men, and I didn't feel as though it needed *to* men to manage it, and finally I decided not to.

Q. Was the amount of compensation spoken of between you and Hinckley at the time?

A. I don't think Mr. Hinckley mentioned anything. My recollection that I said to Mr. Hinckley that I thought the compensation of a receiver of that road should be about $5,000.

Q. A year?

A. Yes, sir; and for that reason I did not think that road was justified in having two.

Q. Well, you were then willing to accept the receivership alone?

A. Yes, sir.

Q. And give your entire attention to the property?

A. Yes, sir.

257 Q. For that compensation?

A. Yes, sir.

Q. You think that is ample compensation for any competent man to take charge of that property and give it his entire attention as receiver?

A. I think it is quite as much as such a road as that ought to pay.

Q. Well, have you heard the testimony of these various witnesses who have testified?

A. Yes, sir.

Q. You have set by and listened to all of them?

A. Yes, sir; I have heard most of it.

Q. Well, from the condition in which that property was at the end of Mr. Hinckley's administration, on the supposition that he had had cash balances in his hand for the last 12 months, running from 50 to 80 or 90 thousand dollars a month, having a road at the end of 21 months in that condition, would you or not say it had been prudently and judiciously managed in the interest of the property?

258 A. The testimony seems to indicate that the repairs were not made as promptly as they should be. I think with reference to that, that the old adage of a stitch in time applies with quite as much force to a railroad as to repairs in a garment.

Q. What is the effect of allowing such property to run down, the track getting out of repair badly, and its machinery out of repair; does it cost a good deal more to put it into repair than it would have done to keep it in reasonable repair?

A. Yes, sir.

Q. What is the effect upon the road-bed and machinery operated upon it in allowing the road to get down, ties rotten, track out of line, and out of surface?

A. Well, it is necessarily to ultimately increase expenses.

Q. On the supposition that he had monthly cash balances on hand for say 12 months, running from 50 to 80 thousand dollars, what
259 condition ought that property to have been kept in as regards repairs?

A. It should have been kept in good practical order, the track and machinery and rolling stock, of course, if there was money to do it with.

Q. You heard the testimony of Mr. Hudson, did you not, yesterday?
A. Yes, sir.
Q. You heard the testimony of Mr. Jeffreys, and you heard the testimony of Mr. Nicholl, did you not—all of it?
A. Yes, sir.
Q. From that testimony would you or not say that that road has been properly managed during Mr. Hinckley's administration, as to keeping it in repairs?
A. Well, I should judge not; I should judge the repairs were not made as prompt as they should have been.
Q. In your judgment was it proper management on his part to stay in Chicago and operate three other railroads, and rebuilding others
260 at the same time, could he give proper attention to a road under those circumstances, visiting it once a month two or three days at a time?
A. I should think not if it was economically managed; he might employ some one to do the work and have them on the line, and have them report to him once a month.
Q. Suppose he was president of the Chicago & Paducah, Chicago & Iowa, Chicago, Pekin and Southwestern Railroads, an' engaged in the active operation of those lines, and at the same time constructing a railroad in Iowa; could he give much attention to the Gilman road, keeping his office in Chicago?
A. I should think not, except in the way I said; that is, if he had some one that would do the business properly attaching to the management of the road.
Q. I am speaking of his personal management; he might, of course, employ men, but could he possibly give much personal attention to it?
261 A. I should think not.
Q. Suppose about all he did during his receivership was to go down there once a month, look into the books, pass over the line, pay off the men, or assist in paying off the men, taking the money all the time and keeping it, having large monthly balances on hand, as I have said, ranging from 50 to 80 thousand dollars a month, and keeping that and permitting the road to get into the condition that has been testified that it was; were his services worth anything to the property, in your judgment, or were they an injury to it?
A. Well, I don't know about that. I think if a man assumes the responsibility of the management of a piece of property, he is in duty bound to give time enough to it to render the service he has undertaken, and if he don't do that, he don't do his duty; that is my practice.
Q. Well, from what you have heard testified to, taking what you have heard here for the truth, would you or would you not say he did his duty to this property?
A. Well, I have stated that I don't think the repairs on the road
262 were prompt enough from the testimony that has been presented here.
Q. In getting at the compensation for a railroad management, or any other management, how is that estimated? Does the length of the road or the value of the property have anything to do with it, and, if so, what?
A. The magnitude of the business and of the property intrusted to the manager of course determines, to a very great extent, his compensation. For instance, a road like the Gilman road, managed skilfully, would not require a man of the same calibre or experience, by any means, that the Illinois Central or the Alton Road or the Northwestern, or any of

those large roads, would require, where there is a great volume of business of various kinds, necessarily requiring more competent management and higher order of ability generally.

Q. Suppose James C. Clark gives his entire time and attention to the management of eleven hundred miles of road, either in his office or on the line as a general manager, how much more compensation ought
263 he to have, in your judgment, for that service than Mr. Hinckley, giving a couple of days in a month to looking after the Gilman road?

A. Well, he would certainly render a great deal more service and the position would be more responsible. It would require a great deal better man to take that position than it would to run the Gilman road.

Q. It would require a man of more ability?

A. Yes, sir.

Q. Much greater compensation than if a man gave his whole time to the Gilman? It would require a good deal better man to manage a large railroad than a small one?

A. Yes, sir.

Q. And the compensation should be somewhat appropriate to the service?

A. Yes, sir. They subdivide the management of these large roads generally. I have a theory about the value of men, a theory with reference to so much, and when a man gets to be worth about $5,000, those that are worth more than that a year are infrequent. You don't
264 find them very often.

Q. Are you acquainted with about what salaries are paid to the general superintendents of first-class roads, such as the Illinois Central, Chicago and Alton, Northwestern, C., B. & Q., and the Rock Island?

A. Yes, sir.

Q. About what salaries do they get?

A. Those who are denominated general superintendents receive from four to six and perhaps eight thousand dollars a year in some instances. That is very rare, I think.

Q. They will average about how much?

A. Well, I should say $5,000.

Q. That is for operating such roads as I have mentioned?

A. Well, these larger roads, I think; I don't know if you average in mere numbers the small roads with the large ones it would be as high as $5,000.

Q. I am speaking of the larger ones, Illinois Central, Rock Island, C., B. & Q., Northwestern, Chicago & Alton.

A. 6 or 7 thousand dollars.

Q. Such roads as the Gilman road, of one hundred miles or
265 one hundred and eleven miles in length?

A. The manager of such a road as that ought to do it for $5,000 a year certainly.

Q. Give his entire attention?

A. Yes, sir; all his time.

Q. What about financial responsibility?

A. That is a point that might effect compensation—the responsibility in connection with the finances. The management under a receivership, I understand, represents the court, and any losses that might occur in the finances of the road, if done in the ordinary way, without any culpable neglect, would be recognized by the court, and not thrown upon the receiver. That is the view I took of it at the time I proposed to receive the receivership.

Q. Suppose the whole financial responsibility of the receiver consists in taking care of the money?

A. As I said before, I would have been willing to have given my time to that road for five thousand dollars a year as receiver.

Q. And given your whole time?

266 A. Yes, sir; I consulted my attorney at that time with reference to this money responsibility, and he told me the court would not hold a receiver responsible for anything except culpable neglect.

Q. You would have given bonds to act as general superintendent of the road, wouldn't you?

A. Yes, sir.

Q. Stay in its general office and manage its business, wouldn't you?

A. Yes, sir.

Cross-examination by Mr. HINCKLEY:

Q. Your opinion as to the condition is made up entirely of hearsay?

A. Yes, sir; I thought I answered in that way—that it was from the testimony—the condition of the road, you mean?

Q. You have not been over the road?

A. Not for several years; no, sir.

Q. You simply answer from this one sided——

A. I said in my answer that it was from the testimony I had heard.

Q. Do you regard the compensation paid to a receiver to be measured in the same way as the compensation paid to a general superintendent?

267 A. With the exception I have stated, the pecuniary responsibility, whatever that may be, that attaches to it, I doubt that the responsibility would be the same in either case; whether the man was receiver under the court or superintendent of the road, he would be liable for culpable neglect in either case.

Q. Would you regard it as any reason why additional compensation should be given to a receiver from the fact that he had to give large bonds?

A. Well, of course that has some weight in the matter; usually there is no trouble about the bonds; those are generally given by parties interested in the matter.

Q. Still you would not manage a road and give bonds at the same rate that you would if you did not?

A. No; I don't think I would, if I was obliged to go outside of parties interested in the road & obtain bonds; if I had to drag my friends in & give bonds, I think I should expect more compensation.

Q. Suppose you was in the management of a road, and that there was a hostile party to your administration that was constantly annoy-

268 ing you by attacks upon your bonds and criticisms upon your administration, would you be willing to operate a road for the same compensation as if you were working in harmony with the party in interest?

A. I think it would be more burdensome to manage a road in that way, and I should submit to the court in seeking compensation the conditions under which I operated the road.

Q. Don't you recognize, Mr. Morgan, that as receiver there is a necessity for being absent from the track of a road, as you may say, to attend to matters in courts and arrangements outside the simple operation as superintendent?

A. Well, yes, sir; there would be a liability to be called away in matters of that sort, but I don't think the legal proceedings would occupy a very great amount of time.

Q. Suppose it becomes necessary, would you operate a road in a condition without credit, where you had to give it your personal credit, as cheaply as you would one in good financial condition?

A. I don't think I should be inclined to give my credit to the
269 road until I knew the exact situation it was in. My personal credit I would not involve in a railroad enterprise, because it is not common with men to have enough money to build or own railroads themselves or operate them successfully with their own money. It requires considerable.

Q. Is it customary for superintendents to sign appeal bonds and things of that kind for roads they superintend?

A. Well, I think that is quite frequently done. I think I have signed a number; it is not regarded as very hazardous to do that.

Cross-examined by Mr. McConnell:

Q. Do you not know that on these large railroads there are very numerous officers?

A. Yes, sir; of course they have; the organization of all railroads should be properly proportioned to the extent of the road and the magnitude of the business.

Q. Now will you state if you know what are usually the different positions that are filled in the organization of a large railroad company such as the Illinois Central, Chicago & Alton, & that class of railroads?

270 A. Well, of course, standing at the head of an organization of a road of that kind is a president and board of directors, and then next in order would be general manager of the road, and following that would be, perhaps, a general superintendent and assistant superintendents.

Q. Several assistant superintendents?

A. Yes, sir; and their subordinates in the form of road masters and agents throughout the line, and usually on those roads the' maintain an engineer department.

Q. A regular engineer department?

A. Yes, sir; a regular corps of engineers for the construction of new work & to replace old work, and put in new and permanent structures or replace temporary structures; and there is a general freight agent and his subordinates, a general ticket agent and his subordinates, and there is a general accountant on the road, and auditor, and a telegraph organization. Of course it is very numerous.

Q. Do not all these roads have a purchasing agent, or numbers of them?

A. Yes, sir; they have purchasing agents—some of the larger roads.

271 Q. And paymaster?

A. Yes, sir. I can enumerate all of them, but I suppose I have answered enough to cover your question. I can take them up in order.

Q. What would the president ordinarily get of a railroad like the Illinois Central? It *is* has been stated here that he got $12,000, if you remember that.

A. Many of the presidents don't receive any compensation, so I have understood.

Q. Some of them do, however?

A. Yes, sir; some of them do.

Q. Do you know from any information what the general manager, say, of the Illinois Central, gets?

A. Well, the present general manager I don't. When I was on the railway commission of this State I was quite familiar with the salaries of the different officers. At that time I think there was $10,000.

Q. It was then $10,000?

A. Yes, sir.

Q. What would the general superintendent be likely to get, or do you know?

A. I think his compensation then was $8,000. Mr. Newell was
272 the president, if I recollect right, at that time.

Q. And the assistant superintendent?

A. I don't recollect; they were not reported—the assistants and subordinate officers.

Q. Have you any conception of what they got?

A. No, sir.

Q. The corps of civil engineers is an expensive adjunct of the railway organization?

A. Not very; they are not estimated very high.

Q. It may not seem very much, but still a considerable outlay is required for that?

A. Oh, yes; I don't wish to be understood there is not considerable outlay on that line. There would not be so many of them unless there was some money paid.

Q. Do you know what would be the ordinary compensation of a paymaster, or do you not recollect. You know he would be paid liberally.

A. I should think a man having charge of the principal disbursement of a large railroad like the Illinois Central would probably get $25,000 a year. It is quite a responsible place.

273 Q. There would be, in addition to the other offices, some purchasing agents, who would also have to be paid, would there not?

A. They usually have purchasing agents; they usually pay them $2,500 a year, I believe, on the large roads.

Q. Would not a general manager's business include that a working-up business for his railroad, establishing proper connections & generally bringing to the notice of the commercial world the advantages of the line over which he had control?

A. Yes, sir; of course that would be his duty, but the freight-agent is looked to generally to secure freights for the line, & of course incidentally a manager has superintendents of every department, and is interested in all of them.

Q. Well, sir, I meant to ask this question: Might not the most efficient manager of a railroad sometimes lay rather in a business direction than in the attention of details which would rather come under the control or the inspection of roadmasters or engineers?

A. Well, unquestionably that is true, and if you mean by that that a general manager shall seek business for a road, why, I think you
274 may employ a cheaper man for that.

Q. I am not speaking of a canvasser—not anything of that kind.

A. I didn't, then, perhaps comprehend your question fully.

Q. A manager of a railroad would need, in order to be able to keep it in a fine condition, the assistants of engineers & mechanics of good experience, would he not?

A. Yes, sir; he ought to have men of good experience in the management of the road, and to have them proportion to the extent of the road economically, because——

Q. The Gilman, Clinton & Springfield Railroad Company, having con-

nection with Chicago over the Illinois Central Railroad, would have considerable business in the city of Chicago, would it not?

A. Yes, sir; undoubtedly there would a great deal of business arise in Chicago.

Q. And with proper communication from the office in Chicago with the different subordinate officers of the concern in the management of the road, a manager here might operate the road successfully and
275 economically, could he not, provided he saw the road occasionally, or as often as the testimony shows Mr. Hinckley did—once a month—assuming that he had an efficient management under him?

A. Of course that would be necessary; it might be managed in that way. I stated that once, I think.

Q. Do you know anything about the condition of the road when Mr. Hinckley took hold of it?

A. No, sir; I don't think that I can state anything that can be of any value.

Q. Do you know anything, from any information, about the condition of it at that time?

A. Well, I know something about it at a little earlier. At the time he took charge of that dash—see, I think he took charge of it in November, 1873.

Q. I think so; I think that is right.

A. In January, 1873, I went over the road officially, as railroad commissioner. I had done so several times before; the road never was completed. They commenced to make a railroad, and got some embankments up, and got a track down, and it was not in good condition.

276 Q. Then you know, do you not, or from information?

A. That was nearly a year prior to his taking possession.

Q. Then you know, do you not, that this railroad never was in a first-class condition?

A. No, sir; I don't think, so far as I am concerned, that it ever was a first-class road.

Q. And never, as you say, completed?

A. I will, to some extent, explain that, by saying that there was very little, if any, travelling on the road, and the embankments were made so narrow, that when the shrinkage took place—the settlement—they were very narrow, and the ties projected some, and generally the road was incomplete.

Q. From that you say it was in a poor condition?

A. Oh, unquestionably it was in a poor condition.

Q. Is it not true that when a railroad track is not well ballasted, and is otherwise in a poor condition, that the rolling-stock would wear out much sooner than upon a tract that was in a good condition?

277 A. Certainly, very much sooner.

Q. And that it would be harder and much more expensive to keep the rolling-stock of such a railroad in fair working condition?

A. Yes, sir; of course.

Do you know anything about the management of that old railroad property?

A. No, sir, I don't, beyond what I have stated.

Q. Do you know anything of the comparative amount of business that was done over it before and after the appointment of Mr. Hinckly as receiver?

A. I know nothing about it further than that I read accounts that the business was increasing afterwards.

Q. That the business was increasing under Mr. Hinckley's management?

A. Yes, sir; but I know nothing about it.

Mr. WILLIAMS. I object to what he heard.

Mr. MCCONNELL:

Q. Do you know anything about the order under which this receiver was appointed; did you ever look at it?

A. I have examined it.

Redirect examination by Mr. WILLIAMS:

278 Q. If the road was not very well built—in rather a bad condition, it was an additional reason why it should have been more carefully looked after?

A. I think that is a logical conclusion.

Q. If a thing is in a very bad shape it ought not to be neglected; if it was badly built and not well finished, and was sadly neglected and not kept in ordinary repair, it would show bad management, wouldn't it?

A. I should think it would.

Q. And make the expense of putting it in condition a great deal heavier than it ought to have been?

A. Yes, sir.

Q. Wasn't the rolling stock of that road in good condition?

A. The rolling stock at the time I saw it was most of it nearly new—I didn't give it a careful examination, a very cursory view of the stock—and it looked very well.

Q. Your objection to the road was that it was not well built?

A. It was the construction of the road that was bad.

279 Q. And being constructed that way and it required to have more care and close attention to keep it up than if it had been properly constructed?

A. Yes, sir.

Q. And it was worse neglect to neglect such a road than a well built road?

A. Yes, sir.

Recross-examination by Mr. MCCONNELL:

Q. If the rolling stock of this company was limited, and the business over the road increasing, would it not have been a serious interruption, and one that a railroad manager would not have wished, to have taken his rolling stock off the track to put it into repair shops?

A. Oh, I have been situated in that respect, as you suggest, when it was impossible to take the cars off to repair them—that is, it was, I say, impossible; I mean by that, that it was a better custom, as a whole, to subject the road to the increased injury to the rolling stock than to take them off.

280 Q. That would be particularly true, would it not, if you were obliged to withdraw your cars and send them to the shops of other railroad companies?

A. Yes, sir; I think that would make it still more forcible.

Q. The manager of a railroad property who had shops along the line of his track, with all proper facilities for the repairing of the stock of damaged property, could keep his railroad in much better condition, couldn't he, than if obliged to send it away?

A. Yes, sir; of course, the greater facility the easier he could do it.

Redirect examination by Mr. WILLIAMS:

Q. All of that would be additional reason why the track should be looked after very carefully; if the rolling stock was running down, oughtn't the track to be looked after more carefully still?

A. I think so.

Q. That would make it more gross neglect to neglect the track?

A. Yes, sir.

Q. If you were scar'e of rolling stock, and it was worked up to its utmost limit, it should be kept in as perfect repair as possible, should it not?

281 A. Certainly, the more perfect the railroad track the more easily you can move the rolling stock over it.

Q. There is no difficulty in keeping the line in surfacing & keeping ties, &c.?

A. A man can keep a track so it can be got over safely without any great expense or time in taking up ties.

Q. What is the effect of machinery in going over a track that is out of line—out of surface?

A. It is very injurious—the shaking of the joints & the shaking of the engine & cars, when the track is out of line, it produces great injuries.

Q. The effect on the track is nearly as great?

A. Of course, correspondingly great; but it don't hurt the embankment much.

Recross-examination by Mr. MCCONNELL:

Q. If this railroad was originally incomplete, as it was unquestionably—I mean to say, if at the time Hinckly took possession it was poorly ballasted, would it not have taken a very large sum of money, comparatively, of course, to have put this tract in a condition to have run rolling stock over it without this damage that you speak of?

282 A. Well, it was a bad season of the year when he took charge of the roads, and it would have been expensive to have put it in good order at that time, during the winter, & it would probably have been quite difficult to do so satisfactorily, because, as Mr. Nicholl suggests in his testimony, it would be impossible to get the material settled at that season of the year so as to be firm and solid.

Redirect examination by Mr. WILLIAMS:

Q. He might have done it in the summer of 1874 & '75?

Answer. Yes, sir. The usual season for taking up tracks is in the summer months, and then after that they allow the settlement to take place. That is regarded as an economical way of doing it, and during the remainder of the season we merely take up joints and maintain the alignment of the track.

Q. So it should be in condition by the month of September, or certainly as early as October?

A. As early as the last of September, because we want a settlement of the material that has been moved to be perfected before the frost and rain of winter.

Testimony of T. J. Nicholl, recalled.

T. J. NICHOLL, a witness, recalled on behalf of the complainant, was duly sworn, & testified as follows:

283 Direct examination by Mr. WILLIAMS:

Q. Did you have to stop any trains while repairing these cars of which you speak—the passenger cars, for instance?

A. No, sir; the trains ran as usual.
Q. Never stopped a train on account of it?
A. No, sir; not one that I am aware of.
Q. Was there any difficulty at any time in keeping the stock in repair & still operating the trains?
A. No, sir; not any at all.

Cross-examination by Mr. HINCKLEY:

Q. Isn't it true that some additional locomotives were brought on to the road about the time you went there?
A. Shortly after.
Q. With the additional equipment you was able to do it?
A. The additional locomotives did not effect the cars. There were sufficient cars always.

Mr. WILLIAMS:

Q. Two new locomotives were purchased?
A. Yes.
Q. They were used in the freighting business?
A. The freighting business entirely.

284 Mr. WILLIAMS. I want the master to consider the fact that the circuit court of McLean County, as shown by the record, appointed Mr. Weldon and Mr. Gapon as attorneys to represent this railroad company in this litigation, but the amount they were paid—that I can't state.

(Endorsed:) Filed July 15th, 1876. J. A. Jones, clerk.

The foregoing was all the evidence introduced in the hearing of the said exceptions, and forasmuch as the matters above set forth do not fully appear of record, the said Francis E. Hinckley tenders this certificate of evidence. and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made and provided; which is done accordingly this 9th day of October, A. D. 1876.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed October 9th, A. D. 1876. J. A. Jones, clerk.

285 And then afterwards, to wit, on the said 9th day of October, in the year last aforesaid, came said receiver, Francis E. Hinckley, by his said solicitors, and tendered his bond, with justification of sureties annexed thereto, which said bond, with justification of sureties, is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Francis E. Hinckley, Arthur B. Meeker, Ralph Plumb, P. B. Shumway, and William S. Brown, all of the State of Illinois, are held and firmly bound unto the United States, for the benefit of Thomas Scott & Hugh J. Jewett, or whom it may concern, in the penal sum of fifty thousand dollars ($50,000), lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents. Witness our hands and seals this twenty-ninth day of September, A. D. 1876.

The condition of this obligation is such, that whereas a certain
286 decree has been entered in a cause entitled Levi P. Morton et al.

vs. The Gilman, Clinton & Springfield Railroad Company, by the United States court for the southern district of Illinois, by which decree it has been finally adjudged, ordered, and decreed that Francis E. Hinckley pay to the clerk of the said United States circuit court for the southern district of Illinois, on or before the tenth day of October, A. D. 1876, the sum of eighteen thousand seven hundred seventy-six dollars and twenty-five cents, from which said decree the said Francis E. Hinckley has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Francis E. Hinckley shall duly prosecute his said appeal with effect, and pay all moneys, interests, costs, and damages rendered and to be rendered against him, in case said decree shall be affirmed in the said Supreme Court of the United States, then the above obligation to be void; otherwise to remain in full force and virtue.

FRANCIS E. HINCKLEY. [SEAL.]
ARTHUR B. MEEKER. [SEAL.]
RALPH PLUMP. [SEAL.]
287 P. B. SHUMWAY. [SEAL.]
WM. S. BROWN. [SEAL.]

Approved October 9th, 1876.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed October 9th, 1876. J. A. Jones, clerk.

United States circuit court, southern district of Illinois.

LEVI P. MORTON ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD R. R. CO.

STATE OF ILLINOIS,
Cook County, ss:

Francis E. Hinckley being duly sworn, on his oath says that he is fairly worth over and above all kinds of indebtedness the sum of one hundred thousand dollars.

FRANCIS E. HINCKLEY.

Subscribed & sworn to before me this 6th day of October, A. D. 1876.
[L. S.] M. S. ETTENJER,
Not. Pub.

(Endorsed:) Filed Oct. 9th, 1876. J. A. Jones, clerk.

288 United States circuit court, southern district of Illinois, ss:

LEVI P. MORTON ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD R. R. CO.

STATE OF ILLINOIS,
Cook County:

Arthur B. Meeker being duly sworn, on his oath says that he is fairly

worth over and above all kinds of indebtedness the sum of two hundred thousand dollars.

ARTHUR B. MEEKER.

Subscribed & sworn to before me this 30th day of Sept., A. D. 1876.
[L. S.] M. S. ETTENJER,
Not. Pub.

(Endorsed:) Filed October 9th, A. D. 1876. J. A. Jones, clerk.

United States circuit court, southern district of Illinois.

LEVI P. MORTON ET AL.
v.
GILMAN, CLINTON & SPRINGFIELD R. R. CO.

289 STATE OF ILLINOIS,
Cook County, ss:

Ralph Plumb, being duly sworn, on his oath says that he is fairly worth in money and real and personal property over and above all his just indebtedness the sum of one hundred thousand dollars.

RALPH PLUMB.

Subscribed and sworn to before me this 28th day of Sept., 1876.
[L. S.] SAM'L C. SMITH,
Not. Pub.

(Endorsed:) Filed Oct. 9th, 1876. J. A. Jones, clerk.

United States circuit court, southern district of Illinois.

LEVI P. MORTON ET AL.
v.
THE GILMAN, CLINTON & SPRINGFIELD R. R. CO.

STATE OF ILLINOIS,
Cook County:

Philip B. Shumway, being duly sworn, on his oath says that he is fairly worth over and above all kinds of indebtedness the sum of twenty thousand dollars.

P. B. SHUMWAY.

290 Subscribed and sworn to before me this 30th day of September, A. D. 1876.
[L. S.] M. S. ETTENJER,
Not. Pub.

(Endorsed:) Filed October 9th, 1876. J. A. Jones, clerk.

United States circuit court, southern district of Illinois.

LEVI P. MORTON ET AL.
vs.
THE GILMAN, CLINTON & SPRINGFIELD R. R. CO.

STATE OF ILLINOIS,
County of Cook:

William S. Brown, being duly sworn, on his oath says that he is fairly worth over and above all kinds of indebtedness the sum of fifty thousand dollars.

WILLIAM S. BROWN.

Subscribed and sworn to before me this 6th day of October, A. D. 1876.

[L. S.] M. S. ETTENJER,
Not. Pub.

(Endorsed:) Filed October 9th, 1876. J. A. Jones, clerk.

291 *Certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, set.:

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings had thereon in a certain cause lately pending in said court, wherein Levi P. Morton, George Bliss, George S. Bowdoin, Thomas A. Scott, Hugh J. Jewett, Walter Watson, Joseph King, J. Stroem, G. H. De Marez Oyens, Geb. Van Nellestyne, De Feutsche Bankvereing, F. P. Connick Liefsteng, J. J. H. Van Esghen, George F. Sweltenham, George Smith, Annie More McEwan, Richard Ellerton, Thomas A. Bell, J. B. Rowe, A. W. Gillman, J. D. Lamb, William Younger, H. Thompson, J. Montgomerie Craig, John B. Frith, W. Boissevain, J. J. Hebblethwaite, W. Endicott, Hugh Williams, C. J. H. Allen, John Paxton, M. Mitchell James John Middleton, John H. Tilly, Eustace G. Cecil, George W. Sandford, G. W. Carew, Philip Rose, Robert Hayward, Archibald Walker, Cunningham Baron Boethwick, Andrew Wark, John Wark,
292 Alfred Rosling, C. M. Berrill, Nathaniel Worsdell, Percy Chaplin, James Baird, John Bruce, William Arnot, Arthur Johnson, Archibald Stumick, William Somerville, jr., Edw. Sturdy, W. Young, Samuel Pearce Hope, Thomas Arthur Hope, Unwin Heathcote, Thomas Wright, Thomas Sutton, R. Charles Lowndes, Hannah Lowndes, A. D. De Marez Oyens, Charles H. Lowe, Robert Howie, John Rose, Oscar Du Pre Grenfell, George Milne, Charles Day Rose, Henry Viner, William Somerville, James Heslop Powell, Archibald Kelso, R. S. Johnson, Charles Douglas, Mary Wakefield Cropper, John Cropper, Edward Cropper, W. J. Brown, J. Lindsay Scott, Julia Du Pre, Louisa Du Pre, Gertrude Du Pre, Fanny Du Pre, J. Ramsay L'Amy, F. Maxwell, A. S. Dallas, Edwin Prince, John Edward Walker, H. T. Thomson, Thomas A. Bush, E. H. Jessop, Hugh Wright, Robert Brown, P. A. Ermens, Jane H. Hudson, Alexander F. Lory, F. Trevethick, Andrew Forsyth, William Charlesworth, George Ranson, Eustace Henry Brownlow, Gascoyne Cecil, R. B. Fenwick, George T. Mitchell, Samuel James Arnold, Henry Crosfield, William Crosfield, John Johnson, A. Kinnaird, Richard
293 Polin, John Peizer, James Pilkington, James Proctor, Joseph Redman, William Robinson, George Sanders, William Shilson, and Louisa Timbrell are complainants, and The Gilman, Clinton and Springfield Railroad Company is the defendant, as fully and completely as the same appear of file and of record in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Springfield, in said district, this 2nd day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundred and first year.

[SEAL.] J. A. JONES, *Clerk.*

294 *Assignment of errors in behalf of Francis E. Hinckley.*

Supreme Court of the United States. Chancery.

LEVI P. MORTON & OTHERS
against
THE GILMAN, CLINTON AND SPRINGFIELD Railroad Company.

Appeal from the circuit court of the United States for the southern district of Illinois.

1st. The court erred in taking jurisdiction of the case.
2nd. The court erred in taking jurisdiction of Francis E. Hinckley.
3d. The court erred in entering the decree of September 25th, 1876.
4th. The court erred in entering the decree against Francis E. Hinckley for the sum of $18,776.25.
5th. The court erred in entering any decree whatever against Francis E. Hinckley.

CRAWFORD & McCONNELL,
Sol's for F. E. Hinckley.

(Indorsed:) U. S. Supreme Court. Levi P. Morton et al. against The Gilman, Clinton & Springfield R. R. Co. Chancery. Entry of appearance of F. E. Hinckley and assignment of errors. Crawford & McConnell, sol's for F. E. Hinckley.

295 Supreme Court of the United States.

FRANCIS E. HINCKLEY, APPELLANT,
vs.
THE GILMAN, CLINTON AND SPRINGFIELD Railroad Co. et al., appellees.

Know all men by these presents that we, Francis E. Hinckley, as principal, and George W. Kretzinger, Joseph K. Barry, and Ralph Plumb, as sureties, are held and firmly bound unto George Bliss and Charles S. Seyton in the sum of fifty thousand (50,000) dollars, to be paid to the said George Bliss and Charles S. Seyton, their executors, administrators, successors, or assigns. To which payment well and truly to be made we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, dated this day of December, A. D. 1877.

Whereas the above-named Francis E. Hinckley hath taken an appeal to the Supreme Court of the United States to reverse the
296 decree rendered in the above entitled action by the circuit court for the southern district of Illinois, directing the said Francis E. Hinckley, as receiver, to pay into court the sum of eighteen thousand seven hundred seventy-six and $\frac{25}{100}$ dollars, the balance found due from him on the settlement of his accounts.

Now, therefore, the condition of this obligation is such that if the above-named Francis E. Hinckley shall prosecute his said appeal to effect and answer all costs, interest, and damages, if he shall fail to

make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

FRANCIS E. HINCKLEY. [SEAL.]
G. W. KRETZINGER. [SEAL.]
J. K. BARRY, [SEAL.]
RALPH PLUMB. [SEAL.]

297 STATE OF ILLINOIS,
Cook County, ss:

F. E. Hinckly on oath states that he is worth more than one hundred thousand dollars over and above all indebtedness. G. W. Kretzinger on oath states that he is worth more than fifteen thousand dollars over and above all indebtedness & these affiants further state that they are well acquainted with J. K. Barry, his property & business, & they believe him to be worth more than seventy-five thousand dollars over & above all indebtedness.

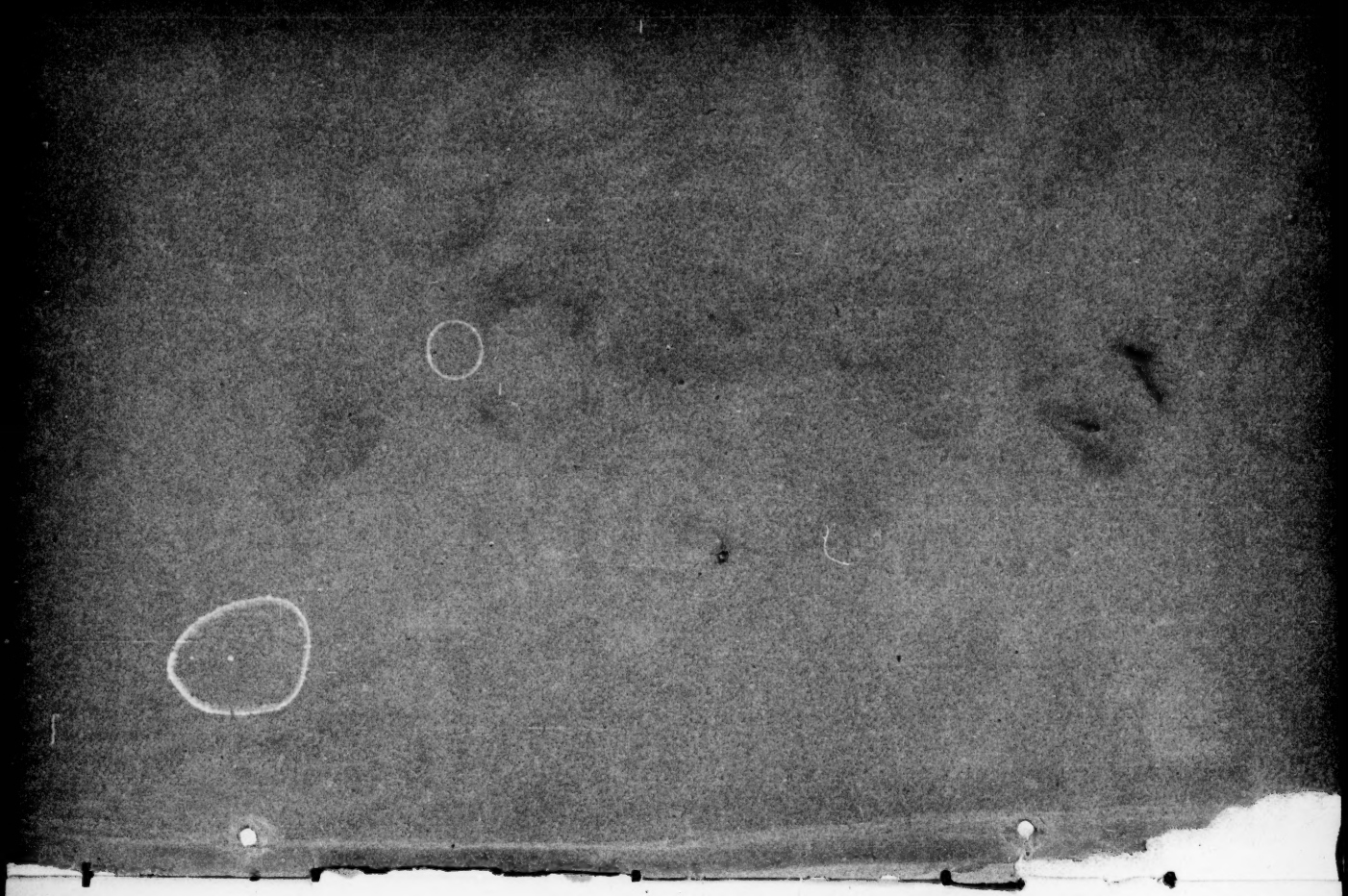
F. E. HINCKLEY,
G. W. KRETZINGER.

Subscribed & sworn to before me this 12th day of April, A. D. 1878.
[SEAL.] ALBERT H. VEEDER,
Notary Public.

298 Approved April 12, 1878.

THOMAS DRUMMOND,
Cir't Judge.

(Indorsed:) Sup. Court U. S., 1877 Octo. term. No. 626. Francis E. Hinckley, late receiver, app't vs. The Gilman, Clinton & Springfield Railroad Company. Bond. Filed 15 April, 1878.



United States Supreme Court,

[No. 90.]

FRANCIS E. HINCKLEY, LATE RECEIVER, ETC.,
Appellant,

vs.

THE GILMAN, CLINTON AND SPRINGFIELD RAILROAD COMPANY,
Appellee.

Appeal from the Circuit Court of the United States, for Southern District of Illinois.

BRIEF AND AUTHORITIES.

G. W. KRETZINGER,

FOR APPELLANT.

HORACE O'DONOGHUE, LEGAL PRINTER, 42 BRYAN BLOCK, 170 LA SALLE STREET, CHICAGO.

IN THE

UNITED STATES SUPREME COURT.

[No. 90.]

FRANCIS E. HINCKLEY, LATE RECEIVER, ETC.,
Appellant,

vs.

THE GILMAN, CLINTON AND SPRINGFIELD RAILROAD COMPANY,
Appellee.

Appeal from the Circuit Court of the United States, for Southern District of Illinois.

BRIEF AND AUTHORITIES,

BY

G. W. KRETZINGER, - - , FOR APPELLANT.

CHICAGO:
HORACE O'DONOGHUE, LEGAL PRINTER, 42 BRYAN BLOCK, 170 LA SALLE STREET.
1879.

STATEMENT.

The transcript of the record of this cause, as filed in this court, involved the proceedings of the foreclosure of a certain trust deed, by the bondholders and trustees against the Gilman, Clinton and Springfield Railroad Company. Therefore, to obviate the necessity of considering so voluminous a record, the stipulation contained on page one of the printed record was made by counsel.

By this stipulation it was agreed that one Joseph J. Kelly, as stockholder and judgment creditor of the Gilman, Clinton and Springfield Railroad Company, file a bill in the Circuit Court of McLean County, and State of Illinois, under which bill Francis E. Hinckley, appellant, was appointed receiver; that afterwards, Levi P. Morton and others, the holders of sundry bonds issued by the Gilman, Clinton and Springfield Railroad Company, and secured by a deed of trust made to Thomas A. Scott and Hugh J. Jewett, as trustees, filed their bill in the Circuit Court of McLean County, and State of Illinois, seeking to foreclose this trust deed and enforce a sale of the property thereunder for their benefit. On the 23d day of June, 1875, Thomas A. Scott and Hugh J. Jewett, the trustees named in this deed of trust, appeared in the said Circuit Court of McLean County, and, by leave of court, became parties in the suit brought by Morton and others against the railroad company.

On the 12th day of August, 1875, upon the application of these trustees, Scott and Jewett, the property theretofore held by appellant as receiver, was ordered to be turned over to said trustees, under the provisions of

the trust deed sought to be foreclosed by the Circuit Court of McLean County, and the receiver was directed to settle his accounts up to that date. It is expressly stipulated by counsel, that appellant's accountability as such receiver ceased from the 28th day of August, 1875, the property having at that time been handed over by him to the agent of the trustees, by order of the said Circuit Court of McLean County as aforesaid. On the 13th day of December, 1875, long after appellant had delivered over the property to the trustees, and after his accountability as such receiver had ceased, and after the management and operation of said railroad property had passed into the hands of the trustees, and they had received the income, rents and profits thereof, this cause of Morton and others, in which the trustees were the controlling parties, was removed to the Circuit Court of the United States, for the Southern District of Illinois, under the provisions of an act of Congress of March 3, 1875.

The statement admits that appellant was appointed receiver in the Circuit Court of Mc Lean County, in the *Kelly* case, but the record does not show that he was ever appointed receiver in, or that his appointment, as such receiver, was extended to the foreclosure suit. The agreed statement further shows that the foreclosure was prosecuted to a final termination, that the final decree had been made and the road sold by virtue thereof, and the deed for the same duly executed and approved by the court, and no appeal had been taken therefrom.

The printed record (30 to 34) shows a report by appellant to the Circuit Court of McLean County, in which he was appointed receiver, ending June 30, 1875, to

which no exceptions appear to have been taken. Prior thereto, various reports had been made, without exceptions being made thereto. In the said last report he shows the balances on hand at the end of each month (see Schedule "H," page 41, printed record), and states his manner of receiving, depositing and disbursing the receipts and income from this railroad property. In this and all previous reports made by appellant to the State court, he charged his compensation, to which no exceptions were ever interposed.

After the removal of the *Scott* case from the State to the Circuit Court, the latter court referred the accounts of appellant to one Ezra M. Prince, as Special Master, to take an account with appellant, and report to the Circuit Court of the United States, for the Southern District of Illinois, the amount due from him as the late receiver of the railroad of the defendant company, which he had operated as such, under his appointment made in the *Kelly* case by the State court. Upon that accounting, the Master found and reported, as due from appellant, the sum of eighteen thousand seven hundred and seventy-six dollars and twenty-five cents ($18,776.25), which report was confirmed by the Circuit Court, to which report of the Master appellant filed his exceptions before the same was returned into court, and upon the said Special Master overruling said exceptions, and returning said report into court, appellant filed objections thereto, among which are the following:

First—"The said Hinckley respectfully excepts to the "order of reference to the said Special Master by this "honorable court, and to the entire report of said Master, "for that this court had no jurisdiction over said Hinckley

" nor of his accounts, said Hinckley never having been the " receiver of this court in this cause, nor subject to its order " as such, but is still subject to the order and control of the " Circuit Court of McLean County, Illinois, as the quondam " receiver of said Gilman, Clinton & Springfield Railroad, " under its order in the case of *Kelly* v. *Said Railroad* " *Company*, then pending.

Second—" And for the further reason that said " Hickley never made any report nor filed any bond as " receiver in this cause; the receiver's accounts now on file " in this case being properly a part of the records in the " case of *Kelly* v. *Gilman, Clinton & Springfield Railroad* " *Company*, and having no connection with this cause, and " for that reason should be stricken from the files of this " court.

Third—" And he objects to the order of reference by " this court to said Special Master, as being *ex parte* and " made without notice to him, and he respectfully asks " that the said order be recalled, and he be left to settle " his accounts with the court which appointed him receiver, " and subject to whose power and control he still is.

Fourth—" He objects to said order and said report, " for that the bondholders of the said railroad company " have no right to except to his accounts as receiver, " because they are not entitled to the earnings of the road " until they have made a demand for its possession, and " he had received the moneys and made the disburse- " ments accounted for in the account to which they except, " a long time prior to their demand for the possession of " the road.

Sixth—" He excepts to the disallowance of voucher " No. 1164, for $500, and insists that it ought to have

" been allowed, so having a perfect right and full authority " to stipulate for such service; and, in fact, the court, " wherein such action was then pending, recognized the " value of such service, and in the defense thus made, " ruled that the principal sum of such bond was not then " due, and a very large and valuable portion of the rolling " stock was not embraced in said mortgage; and he " further says that the payment of such claim for service " was expressly authorized by a decree of the Circuit " of McLean County, dated October 6, 1874, in the case " of *Kelly* v. *The Gilman, Clinton and Springfield Rail-* " *road Company*.

Seventh—" He excepts to said report, for that it charges him with $4,300 interest on monthly balances, " and says that said matter of interest was not referred to " said Master, and is not embraced in the order of refer- " ence, and the Master is not authorized on that which is " not referred to him; and, further, he says that the " exceptions to the report filed October 2, 1875, do not " embrace any charge of interest against him as receiver, " and that report discloses that on the hearing, 'excep- " 'tants abandoned all exceptions except those filed " 'October 2, 1875,' and by reason of such abandonment " the Master has no power to hear evidence or make a " report upon a matter not referred to him nor embraced " in said exceptions filed October 2, 1875. His excep- " tions to said charge are further sustained by the fact that " the finding of the Master that he, as receiver, had made " any profit or derived any advantage out of the trust " fund committed to his charge, is based upon his refusal, " while on the stand as a witness (which refusal was " sanctioned and directed by his counsel there present), to

" answer a question asking him whether he had made any " profit out of such trust funds, and upon such refusal only, " and he submitted that it is contrary to all established " rules of evidence to presume from his silence that he had " converted said trust funds to his private use, and that " he had derived a profit and an advantage therefrom. " And he further says that the Master erred and acted " without authority in considering his examination in said " matter as the basis for any report on this point, for said " examination was conducted in violation of the rules of " such proceedings and under the objections of his counsel, " made at the time ; the said exceptants having, before " his introduction as a witness, closed their testimony, and " lost their right to introduce evidence to prove any new " matter whatever, and especially matter entirely new and " not embraced in the exceptions.

Eighth—He further excepts to said report, for that it " only allows him $10,000 for his salary and services, " which is contrary to the evidence introduced before the " Master, and is contrary to the practice and recognized " allowance of the courts in similar cases, and contrary to " the recognition of the McLean County Circuit Court, " and of the parties in the cause.

All of which exceptions, upon consideration thereof, were overruled by the said Circuit Court, and a decree entered confirming said report in all things, from which decree appellant appealed, and executed his appeal bond for the benefit of Thomas A. Scott and Hugh J. Jewett, in the penal sum of $50,000, said Scott and Jewett being the trustees heretofore referred to.

The following errors are assigned by appellant :

First—The Court erred in taking jurisdiction of the case.

Second—The Court erred in taking jurisdiction of Francis E. Hinckley.

Third—The Court erred in entering the decree of September 3, 1876.

Fourth—The Court erred in entering a decree against Francis E. Hinckley for eighteen thousand seven hundred and seventy-six dollars and twenty-five cents ($18,776.25.)

Fifth—The Court erred in entering any decree whatever against Francis E. Hinckley.

Upon the agreed statement of facts and the printed record therewith, and the errors thereon assigned, we submit.

1. That the Circuit Court did not acquire jurisdiction over the person of appellant, and had no power to fix his compensation, as receiver of the State court, or to inquire into or pass upon his accounts, under the circumstances of this case.

2. That Thomas A. Scott and Hugh J. Jewett, or their agents, George Bliss and Charles S. Seyton, have no interest in, right or title to the fund involved in this controversy. Their trust was fully executed.

We will discuss these propositions in the order named.

ARGUMENT.

I.

It appears from the agreed statement, on page 1 of the record, and in the course of the proceedings of the case, that Mr. Hinckley, the appellant, was appointed receiver of the railroad of the defendant, before the suit was brought by the bondholders or proceedings taken by the trustees, Scott and Jewett, to foreclose the trust deed. That he was so appointed receiver in the suit brought in the Circuit Court of McLean County, by one Joseph J. Kelly and others.

It does not appear in the entire record of this cause, that appellant was ever appointed receiver in the foreclosure case, or that his order of appointment made in the *Kelly* case, was ever extended to the suit prosecuted for the foreclosure of the trust deed by the bondholders, Levi P. Morton and others, and the trustees, Scott and Jewett. It does not appear in the record, by pleading, proof, or judicial proceedings, that the *Kelly* case was ever removed to the Circuit Court of the United States, for the Southern District of Illinois; and it is unequivocally admitted by the statement (*page 1, Printed Record*), that on the 12th day of August, 1875, appellant, as receiver, was ordered by the Circuit Court of McLean County, to turn over the property held by him, as such receiver, to the trustee, under the provisions of the mortgage, and directing him to settle his accounts up to that date in that court, and that "his accountability as such receiver ceased from the 28th "day of August, 1875, the property having at that time "been handed over by him to the agent of the trustees as "aforesaid."

On the 13th day of December, 1875, the foreclosure case, in which appellant had never been appointed receiver, was removed from the Circuit Court of McLean County to the Circuit Court of the United States, for the Southern District of Illinois, under the provisions of the act of Congress of March 3, 1875, leaving the *Kelly* case pending in the State court,—the Circuit Court of McLean County.

The removal act of 1875 confers upon the Federal court concurrent jurisdiction with the State court, in a certain class of cases, depending upon the citizenship of the parties to the suit—as to a controversy in the suit.

We do not question that this foreclosure suit was properly removed from the State to the Circuit Court of the United States, for the Southern District of Illinois, and that, upon removal, the jurisdiction of the Circuit Court attached to the railroad property, then and prior to that time being in the possession of the trustees, as *quasi* receivers, who were parties to the suit removed. But we respectfully insist, that appellant was not brought within the jurisdiction of the Circuit Court of the United States by such removal.

His receivership ended on the 12th day of August, 1875, and on the 28th day of August, 1875, appellee's counsel admits in the agreed statement, that his accountability as such receiver ceased, and that he was subject to the order of the Circuit Court of McLean County, to render his final account as such receiver in the *Kelly* case.

The order of August 12, 1875, for appellant, as receiver, to deliver the railroad property to Messrs. Scott and Jewett, as trustees, was entered in the *Kelly* case.

Appellant was appointed receiver and discharged by

the State court, under the order of August 12, 1875, and his accountability ceased as such receiver, even to the State court, on and after the 28th of August, 1875. He was created as receiver by the State court, in a case, and by the State court discharged, as such receiver, out of the same case, over which the Circuit Court never had acquired jurisdiction, either of the parties or the subject matter.

The jurisdictional questions involved in the removal of this cause of Scott and others, trustees, etc., against the defendant railroad company, were presented to and decided by DRUMMOND, J. In his opinion (6 Bissell, 530), in which he says: "The State court had appointed a "receiver in the *Kelly* case, who, in August last, had been "superseded by the appointment of two of the plaintiffs in "this case, Scott and Jewett, as trustees, under the deed "of trust the receiver being required to deliver to them "all the property held by him as receiver. * * * "This being the condition of the two cases, and a record "of this case being filed in this court, a motion is made, "the effect of which is to remand the cause to the State "court first, for the reason that at the time the applica- "tion was made for a removal, the order made in August, "in the *Kelly* case, so operated upon the property that it "was still in the custody of the State court, in the hands "of the trustees, as *quasi* receivers. * * * "The effect, then, of the order made in such case, was to "put the trustees in possession under the deed of trust, "and because there was a litigation pending, affecting the "property in the two cases, to make the trustees subject, "to some extent, at least, to the control of the court. "* * * A receiver had been appointed in the "*Kelly* case. That receiver had been removed because,

" it is to be presumed, the court deemed the trustees, " under the circumstances, the proper custodians of the " property. In fact, it seems to be conceded that the " *Kelly* case was not one where a receiver should have " been appointed. It may be regarded, therefore, only a " possession of the trustees, so far as the court was con- " cerned, for the purpose of exercising a certain control " over the property, so as to protect the rights of all " parties."

The court disposes of these jurisdictional questions, and holds the case removable under the act of Congress of March 3, 1875, and not only takes jurisdiction of the parties, because the controversy appears between citizens of different States, but holds that the jurisdiction extends and attaches to the property, not because appellant had been appointed receiver in the *Kelly* case, but for the reason that that receivership had been, long prior to the date of removal, determined, and the possession of the property transferred to the trustees, the plaintiffs in the case removed. Therefore, by the judgment of the Circuit Court of the United States, appellant's relation to the property in the *Kelly* case is adjudged to have been determined by the order of the State court transferring the possession of the property from him to the trustees, and it was not claimed by counsel, nor by the court in the case cited, that he had any connection whatever, as receiver or otherwise, with the cause removed from the State to the Federal court.

Appellant was brought into the Federal court by summary proceedings in the nature of an attachment for contempt, (see printed record, page 48) which was the only process issued against him upon which the decree

was rendered, which he seeks to reverse on this appeal. If plaintiffs had cause for complaint against appellant as the receiver of the railroad of the defendant company, appointed and removed by the Circuit Court of McLean County, the only court that could hear such complaint and grant relief against appellant, was the court appointing and removing him.

In the case of *Conkling* v. *Butler*, 4 Bissell 24, McDONALD, J., clearly states the rule and says: "If that "case is still pending in the Hamilton Circuit Court, and "if Butler has not yet made final settlement therein of the "trust of that court reposed in him, he might at any time "be compelled by that court to render account of his "doings to the same; and if he failed to do it, he would be "liable on the bond which it secures, that the court exacted "to secure the faithful performance of his duties as receiver.

"By the bill demurred to, it is proposed to call "Butler away from the court which appointed him---which "exacted his official bond, to which he must, by the terms "of his bond and of the Indiana Code, account, and "whose directions he is bound to obey---and require him "to account to and obey another court, which never had "anything to do with his appointment, or with the case "under which he was made a receiver. The mere statement "of the case thus made by the bill is enough to show the "impossibility of sustaining it. Butler is sued here as "a receiver, and called upon to here account as a receiver. "He never, in any case, was a receiver of this court, and "cannot be called on to answer as such in it."

High, in his valuable work on Receivers (sec. 781), states the following to be the accepted rule:

"The powers of courts of equity to fix the compen-
"sation of their own receivers is well established, and
"results necessarily from the relation which the receiver
"sustains to the court, he being its officer or agent, deriving
"his functions only from that source. In the absence,
"therefore, of any ~~legislation~~ legislation regulating the receiver's salary
"or compensation, the matter is left entirely to the deter-
"mination of the court from which he derives his appoint-
"ment."

In support of this rule, the learned author cites the cases of *Gardiner* v. *Tyler*, 3 Keyes, 505; S. C., 2 Ab. Ct. Ap. Dec., 247; *Baldwin* v. *Eazler*, 34 N. Y. Supr. Ct. R., 275; *Magee* v. *Cowperthwaite*, 10 Ala. 966.

The case at bar is clearly within this rule. Mr. Hinckley was appointed receiver in the State court. The case in which he was appointed receiver was never removed to the Federal court. The Federal court never had jurisdiction over the case in which he was appointed, the parties, or the subject matter. He was removed from such receivership before the property passed, through the removal of another cause, into the Federal court. He is answerable to the court appointing and removing him. That court alone can fix his compensation and pass upon his final accounts. His receivership commenced and ended with the court, and the Circuit Court of the United States, for the Southern District of Illinois, never acquired, through any process of law known to the practice or provisions contained in the judiciary act governing it, any jurisdiction over the person of appellant or his receivership, which terminated in the State court.

II.

It is a well established rule, that a trustee under a mortgage, or his *cestui que trust*, is not entitled to receive the income and profits from the property mortgaged until after he enters into possession of the property, if such possession is authorized by the mortgage. If possession is not authorized by the mortgage, then he is forced to proceed to a regular foreclosure of the mortgage; or if sufficient equities are shown, he may apply for and obtain an appointment of a receiver, and thus, through the aid of the court, obtain the possession and control of the property pending the foreclosure of the mortgage. The mortgage constitutes no lien upon the income and profits of the property until after possession by the trustee, or the appointment of a receiver, and then he is entitled to only such income and profits as may accrue after such possession or appointment of a receiver. If a receiver is appointed, as in the case at bar, on behalf of a party antagonistic to the trustee, or bondholders, the income and profits derived from the management of the property will not pass to the trustee, for the benefit of the bondholders, until after the trustee has entered into possession, by himself or through the appointment of a receiver, in a proper case made by him for that purpose. Although it might have been sufficient, in the case at bar, if the appointment of appellant as receiver in the *Kelly* case had been extended to the foreclosure case, which was not done, therefore the right of the trustees, who represented the appellee in this case, to the income and profit from the operation and management of the railroad of the defendant company began on the 12th day of August, 1875,

that being the date of the order of the Circuit Court of McLean County, directing the delivery of the property by appellant, as receiver, to them as trustees under the trust deed. It follows, therefore, that whatever moneys may have come into appellant's hands, as receiver, prior to the 12th day of August, 1875, belonged to the complainants in the *Kelly* case, or to such other creditors of the defendant railroad company that might have intervened and established their claim thereto, or to the defendant railroad company.

Without seeking to determine to whom such moneys properly belong, it is sufficient to say that the trustees or bondholders were not entitled to the same, and that the disposition thereof belongs wholly and alone to the State court, which still continued to retain jurisdiction over the *Kelly* case, in which the moneys had been received by Mr. Hinckley as receiver. In the case of the *American Bridge Company* v. *Heidelbach*, 94 U. S. (4th Otto), this court says: "In this case, upon a default which occurred, the "mortagees had the option to take personal possession of "the mortgaged premises, or to file a bill, have a receiver "appointed, and possession delivered to him. In either "case the income thereafter would have been theirs. "Until one or the other was done, the mortgagor, as "Lord Mansfield said, in *Chimmery* v. *Black*, 3 Doug., "391, 'was owner to all the world, and entitled to all the "'profits made!' The mortgage could have no retro-"spective effect as to previous income and earnings. The "bill of the trustees does not effect the rights of the par-"ties. It is an attempt to extend the mortgage to what "it cannot be made to reach. Such a proceeding does not "create any new right; it can only enforce those which

" existed already. The bill of the trustees is as ineffectual " as if the fund were any other property, real, personal, " or mixed, acquired by the mortgagee *aliunde*, and never " within the scope of the mortgage."

Gilman et al. v. *Illinois and Mississippi Telegraph Co.*

Cuykendall, Garnishee, v. *Idem*, 91 U. S. 603.

Galveston R. R. v. *Cowdrey*, 11 Wallace, 459.

Ellis v. *Boston, Hartford and Erie R. R. Co.*, 107 Mass. 35-37.

Second—It is conceded by the statement, that the foreclosure case removed from the State court to the Circuit Court, was prosecuted to a decree of foreclosure, under which the road was sold and a deed for the same duly executed to the purchaser. The power conferred upon the trustees was wholly contained in the trust deed, and the execution of the trust, by a foreclosure of the trust deed and sale of the property, exhausted that power—the trust deed becoming merged in the decree, and the trusteeship ended. Not only did the trust deed merge in the decree of foreclosure, but that decree has been fully executed.

It does not appear, from the record in this case, that any money decree was rendered in the foreclosure proceeding against the defendant railroad company, and no deficit is shown to have existed over the sale of the property. The court will not presume, after the foreclosure of a mortgage and the sale of property in satisfaction of the same, that a deficiency remains due from the mortgagee to the mortgagor. The record of the case must

affirmatively show this fact, and its existence will not be presumed by the court.

If the mortgaged property paid the debt, the trustees have no standing in this or any other court as the representatives of bondholders whose bonds had been satisfied, to prosecute this litigation to recover any sum of money from appellant or any other person. The moment the trust deed was foreclosed, they became strangers to the defendant railroad company and to the property, and the instant the bonds were paid or satisfied. the bondholders had no claims to enforce, either in their own name or through their former trustees, against the defendant railroad company, or any of its officers or former representatives.

It therefore clearly appears, that not only are these trustees seeking to recover money received from the income and revenue of the road before they took possession of the property, and upon which their mortgage constituted no lien, but are attempting to continue their office of trusteeship after the trust has been executed, the trust deed merged in a decree, the decree executed and the bonds paid by the sale of the road.

III.

In our view of this case, we do not propose to discuss the merits, but briefly call the attention of the court to the following facts :

First—The Master, in his report (printed record, p. 51-53), charges the receiver with interest on monthly balances, $4,360. Whereas, the receiver, by his report made to the Circuit Court of McLean County, to the June

Term, 1875, (printed record, p. 30-41, see statement showing balances of cash on hand at end of each month) stated his monthly balances, and reported fully to the court his method of depositing money in the Ridgely National Bank of Springfield, in his name as receiver, and then drawing from this bank as such receiver, and depositing the same in the Third National Bank of Chicago, in his individual name, for the purpose of paying supply bills, etc.; as the supplies were purchased in Chicago, this mode being much more convenient.

This report not only discloses the mode of keeping the deposits, the banks where kept, but also, that for the payment of supply bills, the amount was deposited in his individual name in the Third National Bank in Chicago. To this report no exception was taken. At all times these funds were subject to the order of court.

The Circuit Court of McLean County, who appointed appellant receiver, and under whose exclusive jurisdiction and orders he acted as such receiver, from the date of his appointment until his discharge on the 12th day of August, 1875, received this report without criticism or objection. The sole power to charge appellant with this interest, or to affect him by inquiring into his accounts, resided with the court appointing and discharging him. This rule is uniform, as we have already stated it.

It was not claimed that appellant drew all of the money from his account, as receiver, from the National bank in Springfield, but only such amounts from time to time as were necessary to pay supply bills in Chicago, which for safety, until the payments were made, were

deposited from time to time to his individual name in the Third National Bank.

There is no evidence in the record of this case even tending to show the amount, or amounts, that appellant carried over from month to month in the Chicago bank, and there was no evidence to show, or tending to show, that the monthly balances upon which the Special Master charged interest against appellant, were not in the bank, in Springfield, in the name of the receiver, instead of in the bank, at Chicago, in his individual name.

The court will further observe, that the question of interest was not raised by the exceptions to appellant's report, which was referred to a Special Master for proof and conclusions. Therefore, Mr. Prince, the Special Master, examined into a question, to wit, interest on monthly balances, which was not presented by the exceptions to the receiver's report, and not included in the order of reference.

Second—Appellant charged in his report, as compensation, at the rate of $1,000 per month. The reasonableness of this compensation was clearly established by the evidence of A. L. Hopkins, a railroad expert and receiver of the T., P. & W. R. R., and Adney Anderson, receiver of the Chicago, Danville and Vincennes Railroad. These two witnesses not only testified, as railroad experts, to the reasonableness of the compensation charged by Mr. Hinckley, but also as receivers.

Mr. Hopkins testified he was receiving $1,000 per month on account of his services as receiver. Mr. Anderson, that he had drawn out $900 per month on account,

but that he expected to be allowed more when his allowance should be fixed by order of the court.

Neither one of the witnesses fixing the compensation of appellant less than $1,000 per month, had ever acted as receivers of a railroad, nor had the charge of the management of one.

It is shown, without contradiction, by the testimony of Mr. Hinckley, that he was not only receiver, but that he was the general manager of the road, his own purchasing agent and paymaster; that he purchased all supplies himself, paid all of the bills, and examined personally and signed all the vouchers, and gave personal attention to all the details of the entire operation of the road.

The record shows that appellant was a railroad manager of many years' experience.

True, several witnesses called by counsel for the trustees testified before the Special Master that they would have served as receiver of defendant's road for $5,000 per annum, or for a less amount than that retained by appellant. Such testimony cannot be considered as in any manner disproving the value of appellant's services, or that they were worth less than at the rate of $1,000 per month, the amount retained by him.

In the case of *Cowdry* v. *The Railroad Company*, 1 Woods, 331, Mr. Justice BRADLEY, in his learned opinion, says, p. 345: "It would hardly be a proper rule for "governing this case, to inquire what another even com- "petent person would have been willing to do the work "for. The receiver's office is not put up at auction. His "compensation is not fixed on that principle at all. * * "Where a receiver is a manager as well as a mere

" receiver, his duties and responsibilities are largely " increased, and the management of a business like that " of a railroad is one of the most difficult and responsible " duties that a receiver is charged with. It requires a " man of first-rate qualities and attainments. Now, we " have it in proof that the railroad presidents of the " country receive various sums, from $3,000 to $20,000 a " year, many of $5,000, some of $10,000, a few above " $10,000. Most of the defendant's witnesses think that " $5,000 a year would be ample compensation to the " receiver for his services, whilst most of the witnesses " called for the receiver think that $15,000, coin, is not " any too much; that he saved much more than that to " the road, etc. * * * I am inclined to " think that $10,000 in coin per annum would be a fair " rate of compensation in this case."

By this rule the court rejected the testimony seeking to establish the compensation at $5,000 per annum, and allowed the receiver for his services $10,000 in coin.

Appellant was called as a witness on the part of the trustees. His testimony appears in the printed record, abstract p. 70-79. On page 74 he testifies: " It was my " habit, and during the time I was receiver I went over " the road once a month. I examined it carefully; I saw " every employe and paid him his wages myself; I ex- " amined the cars, machinery and shops minutely; I pur- " chased everything that the road needed myself. I ~~have~~ " examined the bills personally when they came in. I ap- " proved every voucher that was paid during my adminis- " tration. I gave every check myself. I spent as much " time upon the line of the road as the interests of the

"road required." Page 79 he testifies: "I had first-
"class men in each department. * * * I
"examined each of them in their departments every
"month, and saw that everything was being well man-
"aged."

This testimony is not contradicted by the evidence of a single witness.

Appellant was appointed receiver in the month of November, 1873, and delivered possession of the property to the trustees on the 28th day of August, 1875, under the order of August 12. After that it was necessary for him to pass his final account and assist in closing unsettled accounts, which would necessarily require his services for some weeks after the delivery of the property. Allowing appellant a reasonable time within which to make his final account and properly close up and adjust the matters over which he had had control and supervision as receiver, the compensation claimed by him would have been less than $1,000 per month, yet the Special Master allowed him as compensation only the sum of $10,000. for fully two years services,

While we would not shrink from submitting this case to this honorable court for determination upon the merits, we respectfully insist, under the principles and precedents cited, the power to fix the compensation of appellant belongs exclusively to the Circuit Court of McLean County, that appointed and discharged him.

Therefore, in conclusion, we submit that upon jurisdictional grounds alone, the decree of the Circuit Court should be reversed. That the real appelees, to wit, the late trustees, have no standing in this court and no interest

in this case, their trusteeship having expired. And that, upon the merits of the case, even if the Circuit Court had jurisdiction, and the interest involved was represented by substantial parties, the decree, in equity and justice, cannot be maintained against appellant.

Respectfully submitted,

G. W. & J. T. KRETZINGER,

Solicitors for Appellant.

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Respectfully submitted,

G. W. & J. T. KRETZINGER,

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G. W. KRETZINGER,
94 DEARBORN ST.,
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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1879.

No. 90.

FRANCIS E. HINCKLEY, &c.,
Appellant,
v.
THE GILMAN, CLINTON AND SPRINGFIELD RAILROAD COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

BRIEF ON PART OF APPELLEE.

R. BIDDLE ROBERTS,

Of Counsel for Appellee.

BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET CHICAGO.

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BRIEF ON PART OF APPELLEE.

Not having seen the brief, if any has been filed, on part of the appellant, I am compelled to prepare mine comparatively in the dark. The attention of the court is respectfully invited to the agreed statement of facts on page 1, printed Record, and they are respectfully requested to notice particularly that this appeal is only from a decree of the Circuit Court of the United States for the Southern District of Illinois, fixing the balance due by the Receiver upon the report of a Master; and that the main case, that of *Thomas A. Scott and Hugh J. Jewett, trustees,* v. *The Gilman, Clinton & Springfield R. R. Co.* has never been appealed from, and is not, and never has been in this Court.

The court is also asked to observe, that on the 12th of August, 1875, the Circuit Court of McLean County, Illinois, turned over to the said trustees, Scott and Jewett, all the property then held by the receiver; that on the 13th of December, 1875, the said cause was removed to the Circuit Court of the United States for the Southern District of Illinois, under the provisions of the act of Congress of March 3, 1875, the sixth section of which act expressly provides that "in all suits removed under "the provisions of this act, the Circuit Courts of the "United States shall proceed therein as if the suit had "been *originally commenced in said Circuit Court*, and the "same proceedings had been taken in such suit in said "Circuit Court, as shall have been had therein in said "State Court prior to its removal."

If the provisions of that act of Congress define anything, they clearly mean that everything connected with the case when in the State Court, up to the moment of its removal, shall be transferred to the Circuit Court of the United States to which such cause may be taken. It may not be improper to add that this case was removed after the fullest argument before the Circuit and District Judges, and, after a history of personalities too voluminous to annoy this court with. Suffice it to say that the opinion of Judge DRUMMOND, after the argument at Springfield, declared that the whole case had been removed, and Mr. Hinckley, as the Receiver, made his final report to the Circuit Court of the United States for the Southern District of Illinois, disclosing his last payments, and asking authority to make further payments, and secured an extension of the time, on the 23d of March,

1876 (vide printed record, page 47,) appeared before the Master in Chancery of the Circuit Court of the United States for the said District, where the account was finally examined, and the balance due ascertained and fixed. In this connection, although I am unable to state whether it is the intention of the appellant gravely to press the question of jurisdiction, the attention of the court is called to the fact that this case has already been presented to them, (4 Otto, 467, *Hinckley* v. *Gilman, Clinton & Springfield R. R. Co.*,) on a motion to dismiss this appeal, which was resisted by the appellant in a voluminous brief. This court held that the motion to dismiss could not be sustained, and for the purpose of an appeal, "he [the Receiver] occupied the "position of a party to the suit, although an officer of the "court, and after the final decree below has the right to "his appeal here," and that this merely keeps in litigation the Receiver's account. If the court below had no jurisdiction, as is intimated in the assignment of errors, then was it not most extraordinary that the appellant should come here resisting the motion to dismiss, claiming the protection of this Court, with its jurisdiction of course derivable from the court below, and then wait from 1876 to 1879, and now raise the question of jurisdiction? Such a course is certainly anomalous, and, we think, will not commend itself to the favorable consideration of this Court. I leave this branch of the case, relying upon the provisions, hereinbefore set out, of the act of 1875, and with the fullest confidence in the fact that if a suit is brought into the Circuit Court of the United States, that all the orders, all the properties, all the

incidents to the condition of that case in the State Court clearly come with it.

As to the final accountability of the Receiver we are reduced, I apprehend, to the consideration of three questions, all the exceptions from the record having been abandoned, save the three, which charge the said Receiver, first, with $500 and other items, paid Mr. Crawford and others, for professional services, alleged to have been rendered in resisting the foreclosure suit; second, for the item of interest charged against the Receiver; and third, as to the Receiver's compensation.

There is no disposition to dispute the fact that it is customary for Receivers to employ counsel. and to pay them out of the fund; but while that proposition is a plain one, it is equally true that he has no authority to employ any counsel to become a partisan to any of the actions pending in any of the several courts, in which he acts as Receiver, (High on Receivers, page 522, paragraph 806), but certainly not to the employment of counsel which, in the language of the Master, "were defend-" ing actions to foreclose the mortgage upon the corpo-" rate property of the road," this was grossly improper, and no portion of the fund should be used for any such purpose; and by no proper construction can the order of the court which appointed the Receiver, and which authorizes him in the course of his business to employ counsel, be distorted into an authority to use the funds for the purpose of employing counsel to take part in resisting the foreclosure of a mortgage which covered the entire property of the road, and which was really the main part of the litigation. It was to preserve and protect

the funds of that identical road that Hinckley was made the Receiver, and it was his duty, so far as the litigation was concerned, to keep his *hands off*, only marshalling the assets as a good Receiver should do.

As to the question of interest he is clearly liable. He admits in his testimony taken before the Master, (printed record, page 72), that he carried large cash balances, ranging at times from $60,000 to $80,000; and in reply to an interrogatory as to whether he used that money in his private business, he *declined to answer*. He admitted that he kept an account at the Ridgley National Bank, at Springfield, and that he drew from that the excess, over and above what was required for current expenses, and *kept it in his private account.*

The court will bear in mind that this road which was only 110 miles long, and which ran from Springfield, the capital of the State of Illinois, through the town of Clinton to the town of Gilman, a station on the Illinois Central R. R., about 80 miles south of Chicago, had its proper and legitimate business headquarters at Springfield. There were the offices of the road; there the accounts were kept; there was the place where the vouchers were made out and taken; there was the place where the employees were paid, and in the proper, and legitimate management of the business of the company, Springfield was the point at which the funds should have been kept and disbursed; yet it is in proof before you, coming from the mouth of the appellant himself that there was only enough money kept at Springfield to meet the current expenses, and that the excess was kept elsewhere. Now, this excess reached at times, as before stated, a

considerable amount, and therefore it is perfectly fair to presume that the bulk of the money was in Mr. Hinckley's private account in some bank in Chicago, rather than where it should have been in the depository at Springfield. On page 34 of the printed record, in the closing part of a report made by Hinckley to to the Circuit Court of ~~Will~~ McLean County, in June, 1875, is the following language which seems fully to explain the exact condition of the cash; and while Mr. Hinckley, as has been before stated, most disingenuously declined to answer where he kept the money deposited, he seems to have forgotten that he gave it in this report.

"All money earned, collected, or received by your Receiver, has been deposited with the Ridgely National Bank of Springfield, in the name of your Receiver as Receiver. From this bank, money is drawn to pay the rolls, and such bills as can be conveniently paid there; but as nearly all the supplies are purchased in Chicago, your Receiver found it necessary to keep a part of the funds in Chicago, and from time to time the funds have been drawn from the Ridgely National Bank at Springfield, and deposited in the Third National Bank of Chicago, *in the individual name of your Receiver*, and from there checked out to pay bills as required."

This contains an admission of all that we required. We refer to High on Receiver, page 520, paragraphs 803, 804. In this connection it is proper to call the attention of the Court also, to the fact, that the Receiver was largely engaged in other business, that he was president of another railroad company, and that he had some interest in a contract upon another road, the precise character of which he declined to state. (Record, page 72). And that doubtless the large balances accumulating from the G. C. & S. R. R., were extremely

useful to him, deposited as he says, to his private account, and on which, unquestionably under all the rulings of the courts, both in England and in this country, he should be charged with interest.

We come now to the third and last proposition, which is as to the compensation allowable to the Receiver. One of the ablest expositions of the law upon this subject that we have is to be found in the case of *Coudrey* v. *R. R. and others*, 1 Wood, p. 531, the principal case being the *Galveston R. R.* v. *Coudrey*, 11 Wallace, 459. In the case reported in Wood, Mr. Justice BRADLEY, (page 347), has clearly and fully laid down the rules applicable to this subject, and given us with pains-taking care, the English authorities in relation thereto, using this language: "it also seems to me that the peculiar "duties, responsibility and accountability of a Receiver "entitle him to a larger amount than would be demanded "by the head officer of an ordinary railroad of this size "and business."

Taking that as the rule, the compensation allowed Hinckley, (page 53 of printed Record), amounting to ten thousand dollars for a period of less than two years, would seem to be ample. This little road, embarrassed and trembling upon the verge of bankruptcy, certainly never would have paid its head officer anything like that sum as a distinct salary; hence, the five thousand dollars per annum allowed the Receiver, is a larger amount than would have been paid such head officer, and is clearly a liberal compensation for work, which he himself admits, was carried on amid other occupations, and to which he devoted only one or two days a month of actual

personal attention. (*Vide* Hinckley's testimony, page 74, printed Record.)

Respectfully submitted.

R. BIDDLE ROBERTS,

Of Counsel for Appellee.

CHICAGO, November 11th, 1879.